

**STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

IN THE MATTER OF:

Docket No.: 25-023832

**ALLEN ROSENBERGER,
Petitioner**

Case No.: STC 25-3

v

Agency: Education

**MASON CONSOLIDATED SCHOOLS,
Respondent**

Case Type: ED Teacher Tenure

Filing Type: Appeal

**Issued and entered
this 22nd day of December 2025
by: Lindsay Wilson
Administrative Law Judge**

**PRELIMINARY DECISION AND ORDER
OF THE
ADMINISTRATIVE LAW JUDGE**

Procedural History

On June 11, 2025, Kelli Tuller, Superintendent of Mason Consolidated Schools ("District" or "Respondent"), filed tenure charges against Allen Rosenberger ("Petitioner") with Respondent's Board of Education (the "Board"). The letter outlined two tenure charges alleging that Petitioner engaged in the following conduct: i.) embezzlement/fraudulent conversion of school funds; and ii.) economic self-dealing/conflict of interest¹.

On June 11, 2025, the Board met and considered the charges. The Board decided to proceed upon the charges filed by the Superintendent, including the recommendation to terminate Petitioner's employment.

On June 30, 2025, Attorney Erin Hopper Donahue, on behalf of Petitioner, filed a Claim of Appeal with the State Tenure Commission ("Commission") and served copies on Respondent.

¹ At the tenure hearing held on September 4, 2025, Respondent voluntarily dismissed Charge II, "Economic Self-Dealing Conflict of Interest" from the tenure charges. [Tr. Vol. III, pp. 540-541].

On July 1, 2025, this matter was forwarded to the Michigan Office of Administrative Hearings and Rules (MOAHR) and was assigned to Administrative Law Judge (ALJ) Lindsay Wilson.

On July 2, 2025, the undersigned issued an Order Scheduling Prehearing Conference for July 9, 2025.

On July 3, 2025, Petitioner's counsel filed a request for an adjournment of the prehearing conference.

On July 7, 2025, Attorneys Roy Henley and Erin Walz filed an Appearance on behalf of Respondent District.

On July 8, 2025, an Order Adjourning and Rescheduling Prehearing Conference was issued to the parties, which rescheduled the prehearing conference for July 10, 2025.

On July 9, 2025, Respondent's counsel filed Respondent's Answer and Affirmative Defenses to Petitioner's Claim of Appeal.

On July 10, 2025, a telephone prehearing conference was convened by the undersigned.

On July 15, 2025, the undersigned issued the Order Following Prehearing Conference and Notice of Hearing, which scheduled a videoconference hearing on the following dates: August 25, 2025, August 28, 2025, and September 4, 2025.

On August 6, 2025, Respondent, by and through counsel, filed a Motion in Limine to Preclude Claimant from Contesting Embezzlement and Brief in Support ("Respondent's Motion").

On August 7, 2025, Petitioner's counsel requested an extension of the deadline to file a response to Respondent's Motion.

On August 7, 2025, an Order Granting Request to Extend Filing Deadline was issued, which extended Petitioner's deadline to file a response to August 13, 2025.

On August 11, 2025, the parties timely filed their proposed exhibits, exhibit lists, and witness lists.

On August 13, 2025, Petitioner's counsel filed a Response to Respondent's Motion.

On August 18, 2025, an Order Denying Respondent's Motion in Limine was issued to the parties.

The hearing was convened as scheduled on August 25, 2025, August 28, 2025, and September 4, 2025, via *Zoom* videoconference. Attorneys Erin Hopper Donahue and Kathryn Rejaei appeared on behalf of Petitioner. Petitioner was also present for the hearing. Attorneys Erin Walz and Roy Henley appeared on behalf of Respondent. Superintendent Kelli Tuller also appeared as a representative for Respondent.

At the conclusion of the hearing, the undersigned allowed both parties to submit post-hearing briefs. On September 5, 2025, the undersigned issued an Order Following Hearing and Establishing Briefing Schedule, which set the deadline for the parties to file post-hearing briefs by October 17, 2025, and response briefs by October 24, 2025.

On October 17, 2025, the parties submitted their briefs summarizing their respective positions.

On October 22, 2025, Respondent's counsel filed a request to extend the filing deadline for filing response briefs. Petitioner's counsel concurred with the request.

On October 23, 2025, the undersigned issued an Order Denying Request to Extend Filing Deadline for Response Briefs.

On October 24, 2025, both parties submitted their replies to the other party's briefs and the record was closed.

Summary of Evidence

The following individuals testified at the hearing on behalf of Respondent:

1. Kelli Tuller, Superintendent of Schools for Respondent District
2. Dawn Nieuwkoop, former Director of Business Services for Respondent District
3. Skyler Riffle, Detective for the Monroe County Sheriff's Office
4. Amanda Pena, Accounting Assistant for Respondent District

The following individuals were called by Petitioner to testify at the hearing:

1. Keith Lawn, former CTE² Instructor for Respondent District
2. Angela Gerber, former Physical Education teacher for Respondent District
3. Andrea Adams, former Science teacher for Respondent District
4. Lynn Ferguson, former High School secretary for Respondent District
5. John Waller, Board member for Respondent District³
6. Chandra Fowler, Board member for Respondent District⁴
7. Allen Rosenberger, Petitioner

The following individuals were called by Respondent to testify as rebuttal witnesses:

1. Kelli Tuller, Superintendent
2. Michelle Strick, former Business Manager for Respondent District

Exhibits

The following exhibits were offered on behalf of Petitioner and admitted into the record unless otherwise indicated⁵:

Petitioner Exhibit 33: Request for Student Activity/Fundraiser dated September 10, 2021; Student Activity/Fundraiser Report Form dated October 15, 2021; Request for Student Activity/Fundraiser dated August 20, 2024; Request for Student Activity/Fundraiser dated October 7, 2021; Student Activity/Fundraiser Report Form dated December 10, 2021; Request for Student Activity/Fundraiser dated September 13, 2023; Student Activity/Fundraiser Report Form dated October 13, 2023; Request for Student Activity/Fundraiser

² Career and Technical Education.

³ Mr. Waller appeared via subpoena. Respondent's counsel objected to Mr. Waller testifying about his personal thoughts or actions as a Board member. The objection was overruled; however, it was noted that Mr. Waller's testimony would not be attributable to the Board in general. [Tr. Vol. III, pp. 572-573].

⁴ Ms. Fowler appeared via subpoena.

⁵ Petitioner's proposed exhibits 1 through 32, 34, and 39 were not offered.

dated October 17, 2023; Request for Student Activity/Fundraiser dated October 28, 2024; Student Activity/Fundraiser Report Form dated October 25, 2024

Petitioner Exhibit 35: Letter from Keith Lawn to Respondent's Board members (undated)

Petitioner Exhibit 36: Letter from Keith Lawn to Respondent's Board members dated January 10, 2025

Petitioner Exhibit 37: Audio recording of Board Meeting dated June 11, 2025⁶

Petitioner Exhibit 38: Written comments by Superintendent Tuller (undated)

Petitioner Exhibit 40: Letter requesting restitution from Superintendent Tuller to Prosecutor Coontz dated July 18, 2025

Petitioner Exhibit 41: Text messages between Superintendent Tuller and Board members

Petitioner Exhibit 42: Letters from Superintendent Tuller to Petitioner regarding Tenure Charges dated May 20, 2025, and June 2, 2025

Petitioner Exhibit 43: Photograph of Petitioner's Office sign

The following exhibits were offered on behalf of Respondent and admitted into the record unless otherwise indicated⁷:

Respondent Exhibit A: Mason Consolidated Schools Student Activity check paid to Capital One Commercial dated May 11, 2023; Menards Commercial Capital One Trade Credit Card Statement dated April 19, 2023; Photocopy of Menards receipt dated April 8, 2023; Purchase Order dated April 12, 2023; Photocopy of Menards receipt dated April 11, 2023; Purchase Order dated April 12, 2023; Payment to Capital One Commercial dated January 11, 2023; Menards Commercial Capital One Trade Credit Card Statement dated December 19, 2022; Photocopy of Menards receipt dated December 8, 2022; Purchase Order dated December 13, 2022; Photocopy of Menards receipt dated December 7, 2022; Purchase Order

⁶ Petitioner's Exhibit 37 was admitted over Respondent's hearsay and relevancy objections.

⁷ Respondent's proposed exhibits L, M, O, and V were not offered.

dated December 13, 2022; Order Summary for 40185880; Purchase Order dated December 13, 2022; Menards Online Sale dated December 12, 2022; Payment to Capital One Commercial dated January 11, 2023; Menards Commercial Capital One Trade Credit Card Statement dated December 19, 2022; Order Summary for 40185880; Purchase Order dated December 13, 2022; Menards Online Sale dated December 12, 2022; Payment to Capital One Commercial dated February 15, 2023; Menards Commercial Capital One Trade Credit Card Statement dated January 19, 2023; Photocopy of Menards receipt dated January 17, 2023; Purchase Order dated January 24, 2023; Purchase Order dated January 12, 2023; Photocopy of Menards receipt dated January 9, 2023; Menards Order dated January 9, 2023; Payment to Capital One Commercial dated June 22, 2023; Photocopy of Menards receipt dated May 8, 2023; Purchase Order dated May 10, 2023; Check to Capital One Commercial dated December 7, 2022; Menards Commercial Capital One Trade Credit Card Statement dated November 19, 2022; Purchase Order dated November 21, 2022; Photocopies of Menards receipts dated November 14, 2022 and November 16, 2022; Check to Capital One Commercial dated November 9, 2022; Menards Commercial Capital One Trade Credit Card Statement dated October 19, 2022; Photocopy of Menards receipt dated October 6, 2022; Purchase Order dated October 16, 2022; Photocopy of Menards receipt dated October 10, 2022; Purchase Order dated October 16, 2022; Check to Capital One Commercial dated April 20, 2023; Menards Commercial Capital One Trade Credit Card Statement dated March 19, 2023; Photocopy of Menards receipt dated March 8, 2023; Photocopy of Menards receipt; Menards Order dated March 8, 2023; Purchase Order dated March 13, 2023; Menards receipt dated March 3, 2023; Purchase Order dated April 12, 2023

Respondent Exhibit B:

Mason Consolidated Schools Student Activity check paid to Capital One Commercial dated May 14, 2024; Menards receipt dated April 7, 2024; Purchase Order dated April 10, 2024; Menards receipt dated April 8, 2024; Purchase Order dated April 10, 2024; Mason Consolidated Schools Student Activity check paid to Capital One Commercial dated March

13, 2024; Purchase Order dated February 13, 2024; Menards receipt dated February 7, 2024; Menards Picking List- Guest Copy, dated February 7, 2024; Menards receipt dated February 7, 2024; Menards Picking List-Guest Copy, dated February 7, 2024; Mason Consolidated Schools Student Activity check paid to Capital One Commercial dated February 15, 2024; Menards receipt, dated January 10, 2024; Purchase Order dated January 22, 2024; Mason Consolidated Schools Student Activity check paid to Capital One Commercial dated December 8, 2023; Menards receipt, dated October 27, 2023; Purchase Order, dated November 10, 2023; Menards receipt, dated November 15, 2023; Purchase Order dated November 27, 2023; Mason Consolidated Schools Student Activity check paid to Capital One Commercial dated April 12, 2024; Menards Commercial Card statement, dated March 19, 2024; Menards Commercial Capital One Trade Card statement, dated March 19, 2024; Menards receipt, dated March 4, 2024; Purchase Order, dated March 13, 2024; Mason Consolidated Schools Student Activity check paid to Capital One Commercial, dated April 12, 2024; Menards receipt, dated February 20, 2024; Purchase Order, dated February 23, 2024; Menards receipt, dated February 23, 2024; Menards Picking List- Guest Copy, dated February 23, 2024; Purchase Order, dated February 28, 2024; Menards receipt, dated February 24, 2024; Menards Picking List- Guest Copy, dated February 24, 2024; Purchase Order, dated February 28, 2024; Menards receipt, dated March 9, 2024; Purchase Order, dated March 13, 2024; Mason Consolidated Schools Student Activity check paid to Capital One Commercial dated June 12, 2024; Menards receipt, dated May 5, 2024; Purchase Order, dated May 7, 2024; Menards receipts, dated May 5, 2024; Purchase Order, dated May 7, 2024; Mason Consolidated Schools Student Activity check paid to Capital One Commercial dated May 14, 2024; Menards Commercial Capital One Trade Credit card statement, dated April 19, 2024; Menards receipt, dated April 14, 2024; Purchase Order, dated April 19, 2024

Respondent Exhibit C:

Menards receipt dated February 23, 2024; Menards receipt dated February 24, 2024; Menards receipt dated March 3, 2023; Menards receipt dated March 4, 2024; Menards

receipt dated March 7, 2023; Menards receipt dated March 8, 2023; Menards receipt dated March 9, 2024; Menards receipt dated April 7, 2024; Menards receipt dated April 8, 2023; Menards receipt dated April 8, 2024; Menards receipt dated April 11, 2023; Menards receipt dated April 14, 2024; Menards receipt dated May 5, 2024; Menards receipt dated May 5, 2024; Menards receipt dated May 8, 2023; Menards receipt dated October 6, 2022; Menards receipt dated October 10, 2022; Menards receipt dated October 27, 2023; Menards receipt dated November 14, 2022; Menards receipt dated November 15, 2023; Menards receipt dated November 16, 2022

Respondent Exhibit D: Mason Consolidated Schools Student Activity check paid to Capital One Commercial dated September 12, 2024; Menards Commercial Capital One Trade Credit card statement, dated August 19, 2024; Menards receipt, dated August 2, 2024; Purchase Order, dated August 7, 2024

Respondent Exhibit E: Menards Transaction Details for August 28, 2023; September 26, 2023; October 27, 2023; November 15, 2023; November 24, 2023; February 23, 2024; February 24, 2024; March 4, 2024; March 9, 2024; April 7, 2024; April 8, 2024; April 14, 2024; May 5, 2024; May 19, 2024; October 11, 2024; October 13, 2024; October 14, 2024; and October 26, 2024

Respondent Exhibit F: Chart of Menards Rebates for CTE from 2023 to 2025; Menards receipt for Rebate No. 1929, dated October 6, 2022; Menards receipt for Rebate No. 1930, dated October 10, 2022; Menards receipt for Rebate No. 1935, dated November 14, 2022; Menards receipt for Rebate No. 1935, dated November 16, 2022; Menards receipt for Rebate No. 2261 (date illegible); Menards receipt for Rebate No. 2262 (date illegible); Menards receipt for Rebate No. 2297 (date illegible); Menards receipt for Rebate No. 2325, dated October 27, 2023; Menards receipt for Rebate No. 2328, dated November 15, 2023; Menards receipt for Rebate No. 3015, dated February 23, 2024; Menards receipt for Rebate No. 3015, dated February 24, 2024; Menards receipt for Rebate No. 3016, dated March 4, 2024; Menards receipt for Rebate No. 2262, dated March 8, 2023; Menards receipt for

Rebate No. 3016, dated March 9, 2024; Menards receipt for Rebate No. 3020, dated April 7, 2024; Menards receipt for Rebate No. 2296, dated April 8, 2023; Menards receipt for Rebate No. 3021 (date illegible); Menards receipt for Rebate No. 3021, dated April 14, 2024; Menards receipt for Rebate No. 3024 (date illegible); Menards receipt for Rebate No. 3024, dated May 5, 2024; Menards receipt for Rebate No. 2301, dated May 8, 2023; Menards receipt for Rebate No. 3037m dated August 2, 2024

Respondent Exhibit G: Website printouts from Rebates International for rebates used at Menards by Petitioner

Respondent Exhibit H: Respondent's Menards Rebates Chart for CTE 2023 to 2025

Respondent Exhibit I: Petitioner's list of items purchased with rebates in August 2023, November 2023, August 2024, and October 2024

Respondent Exhibit J: Menards receipts dated June 21, 2022, August 26, 2022, September 29, 2022, November 20, 2022, November 25, 2022, December 3, 2022, January 24, 2023; Harbor Freight receipt dated February 2, 2023, February 21, 2023, May 27, 2023; Menards receipts dated June 10, 2023, June 23, 2023, August 7, 2023, November 24, 2023, December 15, 2023, December 27, 2023, January 7, 2024, March 27, 2024, May 4, 2024, May 7, 2024, May 23, 2024, June 1, 2024, Harbor Freight receipt dated August 12, 2024; Lowe's receipt dated August 21, 2024; Harbor Freight receipt dated August 24, 2024; Lowe's receipt dated August 24, 2024; Menards receipts dated September 18, 2024, October 2, 2024, October 26, 2024, November 3, 2024, November 23, 2024, November 27, 2024, November 29, 2024; The Home Depot receipt dated November 29, 2024

Respondent Exhibit K: Monroe County Sheriff's Office incident reports for Case SO25-00736

Respondent Exhibit N: Email correspondence from Dawn Nieuwkoop to Petitioner, dated March 8, 2023; Email correspondence from Jennifer Darr to Dawn Nieuwkoop, dated March 8, 2023; Email correspondence between Petitioner and Jennifer Darr, dated March 8, 2023; Email correspondence from Dawn

Nieuwkoop to Kelli Tuller dated November 20, 2024, with forwarded email correspondence between Dawn Nieuwkoop, Katelyn Hodge, and Petitioner, dated November 5, 2024; Email correspondence from Dawn Nieuwkoop to Kelli Tuller dated December 5, 2024, with forwarded email between Dawn Nieuwkoop dated September 14, 2023; Gift Card Ledger (blank); Mason Consolidated School District Request for Requisition Form (blank)

Respondent Exhibit P: Photocopies of Menards Rebate Receipts dated October 13, 2024, October 14, 2024, October 28, 2024, September 11, 2024, October 2, 2024, and October 11, 2024

Respondent Exhibit Q: Email correspondence between Petitioner and Kelli Tuller, dated December 6, 2024, with attached spreadsheets for the cost of barns built in 2023; Email correspondence between Petitioner and Kelli Tuller, dated December 9, 2024 and December 10, 2024, with attached letter from Petitioner regarding barn delivery questions; Email correspondence between Petitioner and Thomas Harmon (various dates); Mason Consolidated Schools Delivery of Sheds chart

Respondent Exhibit R⁸: Combined meeting notes for Summary of Responses from meeting held on December 4, 2024⁹; Beth Sherman's meeting notes dated December 6, 2024; Kelli Tuller's meeting notes (undated)

Respondent Exhibit S: Letter from Keith Lawn dated December 4, 2024; Summary of Conversation with Keith Lawn on May 29, 2025

Respondent Exhibit T: Text message exchange between Kelli Tuller, Susan Costello and Carson Manthey dated December 16

Respondent Exhibit U: Email correspondence from Kelli Tuller to Petitioner dated December 3, 2024, re: Meeting December 5

Respondent Exhibit W: Photographs of Petitioner's personal workshop and items for sale posted to social media

⁸ Respondent's Exhibit R was admitted over Petitioner's hearsay objection.

⁹ The combined meeting notes were erroneously dated December 4, 2024, and should have read December 5, 2024. [Tr. Vol. I, p. 30].

Respondent Exhibit X: Email correspondence between Michelle Strick and Jennifer Mominee dated August 6, 2018; email from Michelle Strick to Dana Blair dated November 19, 2018; email correspondence between Michelle Strick and Dana Blair dated December 28, 2018

Respondent Exhibit Y: Board Policy No. 3209 Debit/Credit Cards; Board Policy No. 4201 Employee Ethics and Standards; Board Policy No. 4214 Outside Activities and Employment; Board Policy No. 4220 Use or Disposal of District Property

Respondent Exhibit Z: 1st Judicial District Court for the County of Monroe Transcript for the Plea Hearing in the matter of *People of the State of Michigan v Allen Rosenberger*, District No. 25-0981-SM, dated July 14, 2025

Issue and Applicable Law

The issue in this case is whether Respondent District established by a preponderance of the evidence that its discharge of Petitioner was not arbitrary or capricious.

Under the Teachers' Tenure Act (Act), a teacher may be discharged or demoted only for a reason that is not arbitrary or capricious. MCL 38.101. The United States Supreme Court has observed that the action of an administrative agency would normally be considered arbitrary and capricious if the agency relied on impermissible factors, failed to consider an important aspect of the problem, offered an explanation for its action that is counter to the evidence, or rendered a decision that is so implausible that it cannot be attributed to a difference in view or to agency expertise. *Motor Vehicle Manufacturers Association v State Farm Mutual Automobile Insurance Company*, 463 US 29, 43; 103 S Ct 2856; 77 L Ed 2d 443 (1983).

In the case of *Cona v Avondale School District* (11-61) the Commission discussed the arbitrary and capricious standard as follows:

In *Garza and Lecznar v Taylor School District* (82-53), this Commission applied an "arbitrary and capricious" standard to review a management decision of a controlling board, citing the following Black's Law Dictionary definition of action that is arbitrary:

[F]ixed or done capriciously or at pleasure; without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; ... without fair, solid, and

substantial cause; ... without cause based on the law ... not governed by any fixed rules or standard. Black's Law Dictionary p 134 (Revised 4th Ed.) [citations omitted]

A decision is arbitrary and capricious if it is based on whim or caprice and not on considered, principled reasoning. *Chrisdiana v Department of Community Health*, 278 Mich App 685, 692 (2008). Notwithstanding that the arbitrary or capricious standard of review is highly deferential, our review is not a mere formality and we are not required merely to rubber stamp the decision of a controlling board. Our responsibility in this case is to review the quality and quantity of the evidence and to determine if the decision to discharge appellant is the result of a deliberate, principled reasoning process supported by evidence. If there is a reasoned explanation for the decision, based on the evidence, the decision is not arbitrary or capricious. *Williams v International Paper Company*, 227 F3d 706, 712 (CA 6, 2000); *Rochow v Life Insurance Company of North America*, 482 F3d 860, 865 (CA 6, 2007); *McDonald v Western-Southern Life Insurance Company*, 347 F3d 161 (CA 6, 2003). If a controlling board overlooked important evidence or erred in appreciating the significance of evidence, its decision may be determined to be arbitrary or capricious. *Pokratz*, supra.

The Commission has held that it is their responsibility to review the quality and quantity of the evidence and to determine if the decision to discharge appellant is the result of a deliberate, principled reasoning process supported by evidence. *Cona*.

When the Legislature amended the Act, it was well aware that in the event that the teacher contested the charges against him or her, the district would be required to prove the charges by a preponderance of the evidence. *Luther v Board of Education of Alpena Public Schools*, 62 Mich App 32 (1975). The Legislature did not change which party bears the burden of proof or the quantum of proof required to meet the threshold to discharge or demote a teacher. *Craig v Larson*, 432 Mich 346, 352 (1989). Therefore, the district bears the burden of proof to establish its case by a preponderance of the evidence.

A "preponderance" means that evidence which, when weighed with that opposed to it, has more convincing force resulting in a greater probability that the alleged misconduct occurred. See *Thomas v Miller*, 202 Mich 43 (1918); *Giddings v Saginaw Township Community Schools Board of Education* (92-1).

However, if the Respondent meets its burden, the burden shifts to Petitioner to rebut Respondent's case. *Williams v Detroit Public Schools* (02-18). As the Commission

stated in the *Williams* case, “[a]ppellee, the party with the burden of proof, must establish a prima facie case by a preponderance of the evidence. Then the burden of going forward with the evidence shifts to the other party, appellant, to rebut that prima facie case developed. *Goodwin v Kalamazoo* (74-6-R and 75-35-R); *Mayfield v Pontiac* (00-18).”

Findings of Fact

Based on the entire record in this matter, including the testimony and admitted exhibits, the following findings of fact are established:

Petitioner’s Teaching Background and Employment History

1. Petitioner graduated from high school in 2002 from Respondent District. [Tr. Vol. III, p. 633].
2. Petitioner received his bachelor’s degree in education from Eastern Michigan University in the fall of 2008. [Tr. Vol. III, p. 633].
3. Petitioner is certified to teach technology and education for grades K through 12. Petitioner also has a secondary endorsement in history for grades K through 12. [Tr. Vol. III, p. 634].
4. From 2010 to 2012, Petitioner taught technology courses at Willow Run. [Tr. Vol. III, p. 634].
5. From 2012 to 2022, Petitioner taught eighth grade exploratory technology, eighth grade American History, and ninth grade computers at Woodhaven schools. [Tr. Vol. III, pp. 634-636].
6. In June 2022, Respondent District made an offer of employment to Petitioner. In August 2022, Petitioner was officially hired on a contingent contract with Respondent District for the position of CTE Construction Trades Teacher. Petitioner’s hiring for this position was contingent on his receipt of his CTE certification. As Petitioner did not yet have his CTE certification, Petitioner began his position as an Industrial Technology teacher. [Tr. Vol. I, p. 19; Tr. Vol. III, pp. 641, 751-752, 809, 820].
7. Petitioner achieved tenure at Respondent District at the conclusion of the 2023-2024 school year. [Tr. Vol. III, p. 775].

8. Petitioner had two evaluations during his time with the District and both evaluations were rated as “highly effective”. [Tr. Vol. II, p. 332].
9. Petitioner won the Golden Apple Award for his achievements and contributions at Respondent District in or around October 2023. [Tr. Vol. III, p. 648].
10. In 2024, Petitioner obtained his CTE endorsement. [Tr. Vol. I, p. 19; Tr. Vol. III, p. 634].
11. At Respondent District, Petitioner taught a Construction I class, which consisted of a broad overview of areas involving construction, woodworking, desktop, drafting and computer aided design (CAD). The projects for the Construction I class included a toolbox project, charcuterie boards, and photo frames. [Tr. Vol. III, pp. 641-642, 646-647].
12. Petitioner also taught a Construction II class, which included teaching students how to build sheds. The sheds were sold to members of the community after they were completed. [Tr. Vol. II, pp. 350-352; Tr. Vol. III, pp. 642-643].

Use of District's Credit Card and Rebates

13. District's Policy No. 3200 Finance and Borrowing, specifically for Policy No. 3209 Debit/Credit Cards, states, in pertinent part:

The Board approves the use of a debit/credit card (credit card) program for the purchase of goods and services on behalf of the District. . . . The Superintendent or designee is responsible for issuing credit cards to authorized users, accounting for and monitoring credit card usage, retrieving credit cards when appropriate, and generally overseeing compliance with this Policy. .

* * *

C. Documentation

An authorized user must submit to the Superintendent or designee an itemized receipt. The itemized receipt must include the name of the business, the date of purchase, a description of each item and its purpose, and the price. A non-itemized receipt alone is not sufficient.

* * *

E. Reward Points or Rebates

Any reward points, rebates, or other benefits received from a third-party credit card company are the District's property.

F. Purchase Review Procedures

The Superintendent or designee will conduct an independent review of credit card expenses, or a sample of these expenses, on a monthly basis. Any unlawful or unauthorized expenditure or other discrepancy will be brought to the credit card user's attention. Upon request, the Superintendent or designee must provide the Board with the documentation submitted pursuant to this Policy or a summary of that documentation with a description sufficient to give the Board reasonable notice of the items purchased. . . .

[Resp. Exh. Y, pp. 1-2].

14. District's Policy No. 4200, Employee Conduct and Ethics, specifically for 4220 Use or Disposal of District Property, states, in pertinent part:

Employees are prohibited from using District property for personal use unless the Superintendent or designee approves the use in advance . . .

[Resp. Exh. Y, p. 10].

15. District's Policy No. 4201, Employee Ethics and Standards, states, in pertinent part:

A. Employee Ethical Conduct

Employees must exercise objectively sound and professional judgment when engaging with students, Parents, colleagues, administrators, Board members, and community members. This standard extends to employee conduct on and off school property. Ethical behavior generally includes, but is not limited to:

* * *

9. Appropriately using District funds, resources, and technology;

* * *

B. Conflict of Interest

Employees shall perform their duties and responsibilities free from a prohibited conflict of interest, unless authorized by the Board or designee. Prohibited conflicts of interest include, but are not limited to:

* * *

3. using or authorizing the use of the employee's public employment or any confidential information received through public employment to obtain personal, professional, political, or financial gain other than compensation received from the District in exchange for services provided to the District for the employee or a member of the employee's immediate family, or a business with which the employee is associated;

* * *

[Resp. Exh. Y, pp. 3-4].

16. The District has various credit cards that are kept in the District's Business Office. When an employee needs to use a District credit card, they check out the card and return it to the Business Office once they are finished. [Tr. Vol. I, pp. 185-186, 256-257].
17. For high school employees, the receipt for any purchase made with a District credit card was to be returned to the high school secretary. [Tr. Vol. II, pp. 372-373; Tr. Vol. III, p. 543].
18. The District has a credit card for Menards. Menards offers an 11% rebate on certain purchases. [Tr. Vol. I, pp. 22, 202, 207].
19. On the Menards receipts that contained a rebate, the receipt would state, "THE FOLLOWING REBATE RECEIPTS WERE PRINTED FOR THIS

TRANSACTION” and then lists the associated rebate number. At the bottom of the receipt is a dotted line where the rebate portion is to be cut off and mailed in along with a rebate form. After processing the rebate, Menards issues a rebate check to the name and address listed on the rebate form. [Tr. Vol. I, pp. 199-200, 209, 223; Resp. Exh. A, p. 11].

20. The District did not have a written policy on how to handle rebates. [Tr. Vol. II, pp. 382, 453; Tr. Vol. III, p. 657].

Petitioner’s Predecessor’s Process Involving Menards Rebates

21. Keith Lawn worked for Respondent District for 31 years. Mr. Lawn was the CTE Construction Trades teacher from 2008 to 2022. [Tr. Vol. II, pp. 349-350].
22. While in his position with Respondent District, Mr. Lawn shopped at Menards to make District purchases. [Tr. Vol. III, p. 372].
23. During Mr. Lawn’s time in the District, the District’s policy was that all rebates were to go into the general fund rather than returning the rebate to a specific program. [Tr. Vol. II, p. 376].
24. Michelle Strick was the Business Office Manager from 2005 to 2019. Dana Blair was the Business Office Manager from 2019 to 2022. [Tr. Vol. III, pp. 550, 829, 836-837].
25. Mr. Lawn wanted to ensure that the rebate funds received from purchases made for the CTE program would not go into the District’s general fund. To achieve this goal, in or around 2012, Mr. Lawn had a conversation with Ms. Strick about mailing in the rebates himself and having those rebate checks sent directly to his home address to ensure that the rebate money went back to the CTE program. Following this discussion, Mr. Lawn began mailing in the rebates himself and having them sent to his home. [Tr. Vol. II, pp. 376-377].
26. Mr. Lawn was never informed by anyone in the District that he was not permitted to submit the rebates on behalf of the District nor did he receive any directive to follow a different procedure for the Menards rebates. [Tr. Vol. II, pp. 377, 380, 451-452].
27. Lynn Ferguson was the high school secretary from 2019 to 2023. When Ms. Ferguson received receipts for District-related purchases, she inputted the

information into the District's system and forwarded the receipts to the District's Business Office. [Tr. Vol. III, pp. 543-544, 547-548, 562].

28. Mr. Lawn submitted receipts for District purchases to Ms. Ferguson. [Tr. Vol. II, pp. 372-373; Tr. Vol. III, pp. 544, 546].

29. Ms. Ferguson never handled Menards rebates while she was the high school secretary and she never received any rebates from Mr. Lawn. [Tr. Vol. III, pp. 546-547].

30. Ms. Ferguson was never told that the Menards receipts should include rebates at the bottom of the receipts. [Tr. Vol. III, p. 548].

31. The Menards rebate checks would often take months to process before they were received. As a result, Mr. Lawn would sometimes purchase District supplies on his personal credit card and keep the rebate check once it came in as a form of reimbursement. [Tr. Vol. II, p. 381].

32. Mr. Lawn did not turn in a receipt to the District for any District items he purchased with his personal credit card. [Tr. Vol. II, pp. 382, 452-453].

33. Mr. Lawn kept copies of his receipts for his own personal records; however, he did not turn in a receipt to the District for the items he purchased using the rebate checks as he never received a directive to do so. [Tr. Vol. II, pp. 372, 378, 382, 451-452].

34. Mr. Lawn was of the understanding from the Business Office that if he spent the value of the rebate check on the District, he did not have to use the actual rebate check for District purchases. [Tr. Vol. II, pp. 381-382; Pet. Exh. 35; Pet. Exh. 36; Resp. Exh. S, p. 1].

35. Mr. Lawn retired in June 2022. [Tr. Vol. II, pp. 349, 416].

2022-2023 School Year

36. Petitioner first started teaching at Respondent District during the 2022-2023 school year as the Industrial Technology teacher. [Tr. Vol. I, p. 19; Tr. Vol. III, pp. 641, 774-775].

37. For purchases that Petitioner made in advance for his program, Petitioner would obtain an invoice from a retailer and fill out a Requisition Form. Once the Requisition Form is approved by the Business Office, a purchase order is

generated. [Tr. Vol. I, pp. 200-201; Tr. Vol. III, pp. 658-659; Resp. Exh. N, p. 8].

38. When making a purchase with the District's credit card, Petitioner followed the process of returning the purchase receipt to the high school secretary and returning the credit card to the Business Office. [Tr. Vol. I, pp. 186, 216; Tr. Vol. II, p. 343; Tr. Vol. III, pp. 660-661].
39. After starting his position, Petitioner often communicated with Mr. Lawn regarding various aspects of the job, including how to handle rebates. Petitioner communicated with Mr. Lawn because he did not receive any formal training on how to handle purchasing for the program. [Tr. Vol. III, pp. 655-656, 661].
40. Mr. Lawn explained to Petitioner the process he followed regarding the Menards rebates over the last ten years and informed Petitioner that he would personally mail in the rebates and have the rebate checks mailed to his home. Mr. Lawn indicated to Petitioner that this practice was put into place when he had experienced issues with the rebates not coming back to their program. [Tr. Vol. II, pp. 382-383; Tr. Vol. III, pp. 657-658, 661-663].
41. Mr. Lawn informed Petitioner that since the rebate checks often take a long time to come back, his practice was to occasionally make District purchases using his own personal money for the value of the rebate and then keep the rebate check as reimbursement. [Tr. Vol. II, p. 383; Tr. Vol. III, pp. 661-662, 669-670].
42. Mr. Lawn stressed to Petitioner that the rebate money needs to be spent within the program. [Tr. Vol. II, p. 383].
43. Petitioner also asked Ms. Ferguson how to handle the Menards rebates. Ms. Ferguson directed Petitioner to speak with Jennifer Darr, the former accounting assistant in the Business Office. [Tr. Vol. I, p. 115; Tr. Vol. III, pp. 548-549, 552, 663].
44. Petitioner spoke with Ms. Darr about how to handle the rebates. Ms. Darr informed Petitioner that it would be acceptable if he wanted to follow Mr. Lawn's procedures of submitting the rebates to use for the District's program. [Tr. Vol. III, pp. 662-663].

45. Dawn Nieuwkoop was employed as the Director of Business Services in the District's Business Office from August 2022 to August 2025. [Tr. Vol. I, p. 180].
46. Petitioner did not ask Ms. Nieuwkoop how to handle Menards rebates after speaking with Ms. Darr. [Tr. Vol. III, p. 747].
47. Ms. Nieuwkoop was aware that Mr. Lawn had permission from the prior Business Office manager to have the District's rebates sent to his home. [Tr. Vol. I, pp. 188, 224-225].
48. The first time Petitioner mailed the Menards rebates on behalf of the District, he mailed the District's rebates separately from his own personal rebates; however, when he received the rebate check in the mail, both the District's rebates and his own personal rebates were compiled into one rebate check. [Tr. Vol. III, p. 670].
49. After receiving the combined rebate check for his personal rebates and the District's rebates, Petitioner decided to start mailing in all the Menards rebates together rather than keeping them separate. [Tr. Vol. III, p. 670].
50. Petitioner kept track of which rebates were personal rebates and which rebates were the District's by writing the different dollar amounts directly on the rebate checks. However, when making a purchase with the rebate check, Petitioner turned in these checks to Menards without retaining a copy for his records. [Tr. Vol. III, pp. 670-671].
51. Petitioner did not turn in receipts for the items he purchased using the rebates. [Tr. Vol. III, p. 731].
52. While waiting for the rebate checks to come in, Petitioner intended to purchase items for the District with his personal credit card as needed and to reimburse himself by keeping the District's rebate check as Mr. Lawn had done. Instead, Petitioner ended up spending the combined rebate checks on both District and personal purchases. [Tr. Vol. III, pp. 669-670; Resp. Exh. E; Resp. Exh. K, p. 18].
53. On March 8, 2023, Petitioner sent an email to Ms. Darr asking whether it was possible to get his own Menards or Lowe's card for the District. Petitioner made this request because he was "running there a lot and in off hours/weekends and have forgot to get the card from you several times." Ms. Darr forwarded the request on to Ms. Nieuwkoop. [Resp. Exh. N, p. 2].

54. On March 8, 2023, Ms. Nieuwkoop sent an email to Petitioner denying his request, which stated, in pertinent part, as follows:

No, we cannot give you a card of your own. In fact, it has been on my to do list to review purchasing with you. My impression is when you were hired, you were thrown into your position and given very little to no guidance. Purchasing approvals need to happen PRIOR to the purchase. I would like to see us transition to requisitions being submitted and purchase orders being issued. If a card is used, unless arrangements have been made, the card is to be returned the same day or the next morning. . . .

I realize this will be a little more work on your end, however, we are required to follow the rules set by the State. This will require more planning and organization on your part, but it can be done. . . .

[Tr. Vol. I, pp. 182, 222, Resp. Exh. N, p. 1].

55. Following the March 8, 2023 email, Petitioner explained to Ms. Nieuwkoop that he was often purchasing classroom supplies on an as-needed basis, which made it difficult for him to submit requisition forms and obtain purchase orders beforehand. Based on this explanation, Ms. Nieuwkoop permitted Petitioner to make purchases first and then complete a Requisition Form and Purchase Order after the purchases were made. [Tr. Vol. I, pp. 180-183, 222-223; Tr. Vol. III, pp. 715-716].

2024-2025 School Year

56. On November 5, 2024, Ms. Nieuwkoop sent an email to Petitioner stating that she was missing a requisition form for an order and asking Petitioner to fill one out. Ms. Nieuwkoop concluded the email by stating, “don’t forget Menards rebates have to go through the school.” [Resp. Exh. N, p. 4; Tr. Vol. I, pp. 191, 223].
57. On November 5, 2024, Petitioner replied to Ms. Nieuwkoop’s email and indicated he would submit the missing requisition form. Petitioner went on to state the following in response to Ms. Nieuwkoop’s statement about rebates going through the school:

When I started, I was told past practice was to submit the rebates myself and it would ensure they would come back to our program.

Because we are buying things with mostly CTE money¹⁰ and the lumber account¹¹ money the rebates have to come back to our construction program. I don't have a problem submitting them another way, but do you have a practice in place to track it and make sure we get them back to use for the shop?

[Resp. Exh. N, p. 4; Tr. Vol. I, pp. 191-192].

58. Ms. Nieuwkoop did not know where the rebates were previously going, but assumed they were going to Petitioner's home and that he was using them on District purchases. [Tr. Vol. I, p. 255].
59. Ms. Nieuwkoop never received any information from her assistant or the high school secretary that Petitioner was not turning in the rebate receipts. [Tr. Vol. I, p. 227].
60. On November 5, 2024, Ms. Nieuwkoop replied to Petitioner and stated, "[i]f we submit it with a different name on it, the rebate will come under your name. Amanda said she submitted one for an order you did online that way. We would hold onto them and give them to you when you get the Menards card." [Resp. Exh. N, p. 4; Tr. Vol. I, pp. 192-193, 262].
61. On November 5, 2024, Petitioner replied to Ms. Nieuwkoop and asked if he should give the rebates to Amanda Pena, Accounting Assistant, rather than the high school secretary. Ms. Nieuwkoop did not send a reply email in response to Petitioner's question. [Tr. Vol. II, p. 337; Tr. Vol. III, pp. 719-721; Resp. Exh. N, p. 4].
62. After his email exchange with Ms. Nieuwkoop on November 5, 2024, Petitioner stopped the practice of personally mailing in the District's Menards rebates. [Tr. Vol. I, p. 137; Tr. Vol. III, pp. 719, 721].
63. In November 2024, Superintendent Kelli Tuller (Superintendent Tuller) was notified of a potential embezzlement that occurred within the Latchkey program. Superintendent Tuller shared her concerns with Ms. Nieuwkoop on or about November 20, 2024. [Tr. Vol. I, p. 20; Resp. Exh. N, p. 4].

¹⁰ CTE money is in reference to purchases made for the CTE program, which came out of the general fund. The general fund includes both state funds and taxpayer funds. [Tr. Vol. I, pp. 231-233].

¹¹ The lumber account was part of the student activity fund. The student activity fund contained funds raised by students, which included the selling of sheds. [Tr. Vol. I, p. 231].

64. On November 20, 2024, Ms. Nieuwkoop forwarded her email exchange with Petitioner dated November 5, 2024, to Superintendent Tuller stating “our conversation this morning reminded me of this. I specifically talked about this with him last year. Either Amanda or I could look at his purchases to verify, but neither one of us remember seeing rebates on any of his Menards purchases.” [Resp. Exh. N, p. 4; Tr. Vol. I, pp. 20-21, 190, 193-194, 227-228].
65. Superintendent Tuller confirmed with Katelyn Hodge, the high school secretary, that Petitioner turned in Menards receipts without the rebates. Superintendent Tuller did not ask Ms. Hodge why she was accepting the receipts without the rebates. [Tr. Vol. I, pp. 114-115].
66. Superintendent Tuller asked Ms. Nieuwkoop to investigate Petitioner’s use of the Menards rebates. [Tr. Vol. I, pp. 21, 194].
67. Ms. Nieuwkoop asked Amanda Pena, Accounting Assistant, to pull Petitioner’s purchase orders, invoices, and credit card statements as part of the investigation into Petitioner’s use of the Menards rebates. [Tr. Vol. II, pp. 224, 337].
68. Superintendent Tuller went to the Menards website and input both the District’s address and Petitioner’s address to determine whether the rebates from District purchases were sent to the District or to Petitioner’s home address. [Tr. Vol. I, pp. 22-23; Resp. Exh. G and H].
69. For the rebate checks that were mailed directly to Petitioner, the Menards website showed the purchase date and the associated rebate numbers that were then combined to issue a single rebate check. The website also indicated whether the full rebate check had been redeemed. [Tr. Vol. I, pp. 23-25, 122-123; Resp. Exh. G].
70. Ms. Nieuwkoop reviewed the purchase orders, credit card statements, Menards receipts, and a Rebates International report to create a chart that included information regarding the purchase date using the District credit card, the amount of the purchase, the rebate number associated with the purchase¹², the 11% rebate amount, and the date the District’s rebates were used. Ms. Nieuwkoop determined that certain rebates were redeemed. [Tr. Vol. I, pp. 21-22, 194-195, 210-211, 236-237; Resp. Exh. A, B, D, G, and H].

¹² In some instances, the same rebate number was issued for purchases that occurred on the same day but at a different time or on a different day entirely.

71. Ms. Nieuwkoop provided the following chart to Superintendent Tuller:

Menards Rebates-CTE 2023-2025

2023								
Purchase Date	Amount	Rebate#	11% Rebate Amt	Rebate Status	Date Used	PO	Acct	Scanned
2022.10.06	\$125.26	1929	\$13.78	Redeemed	11.24.2023	316	11	x
2022.10.10	\$13.68	1930	\$1.50	Redeemed	11.24.2023	313	11	X
2022.11.14	\$31.63	1935	\$3.48	Redeemed	11.24.2023	417	61	x
2022.11.16	\$63.59	1935	\$6.99	Redeemed	11.24.2023	417	61	x
2023.03.03	\$30.31	2261	\$3.33	Redeemed	11.24.2023	807	61	x
2023.03.07	\$26.53	2262	\$2.92	Redeemed	11.24.2023	712	61	x
2023.03.08	\$62.43	2262	\$6.87	Redeemed	11.24.2023	712	61	x
2023.04.08	\$1,708.65	2296	\$187.95	Redeemed	11.24.2023	276	61/11	x
2023.04.11	\$266.46	2297	\$29.31	Redeemed	11.24.2023	829	11	x
2023.05.08	\$246.11	2301	\$27.07	Redeemed	08.28.2023	900	61	x
			\$283.21					
2024								
Purchase Date	Amount	Rebate#	11% Rebate Amt	Rebate Status	Date Used	PO	Acct	Scanned
2023.10.27	\$102.96	2325	\$11.33	Redeemed	10.02.2024	398	61	x
2023.11.15	\$177.66	2328	\$19.54	Redeemed	10.02.2024	425	61	x
2024.02.23	\$460.97	3015	\$50.71	Redeemed	10.02.2024	656	61	x
2024.02.24	\$406.99	3015	\$44.77	Redeemed	10.02.2024	657	61	x
2024.03.04	\$63.44	3016	\$6.98	Redeemed	10.02.2024	675	11	
2024.03.09	\$1,220.68	3016	\$134.27	Redeemed	08.10.2024	687	61	x
2024.04.07	\$47.39	3020	\$5.21	Redeemed	08.10.2024	767	61	x
2024.04.08	\$197.86	3021	\$21.76	Redeemed	08.10.2024	768	61	x
2024.04.14	\$221.58	3021	\$24.37	Redeemed	08.10.2024	791	11	x
2024.05.05	\$887.96	3024	\$97.68	Redeemed	08.10.2024	846		x
2024.05.05	\$1,530.37	3024	\$168.34	Redeemed	08.10.2024	847		x
			\$584.96					
2025								
Purchase Date	Amount	Rebate#	11% Rebate Amt	Rebate Status	Date Used	PO	Acct	Scanned
2024.08.02	\$219.90	3037	\$24.19	Redeemed	10.26.2024	180	11	x
2024.09.11	\$605.44	3043	\$65.61	Amanda Mailed		341	CTE & 61	Rebate Receipt returned by Allen
2024.10.28	\$818.56	3050	\$90.04	Amanda Mailed		525	CTE & 61	Rebate Receipt returned by Allen
2024.11.04	\$574.74	3051	\$63.22	Not Received Yet		535	61	Amanda submitted
			\$243.06					
Total Rebates			\$1,111.24					
Rebates Used			\$892.37					

[Tr. Vol. I, pp. 21-22; Resp. Exh. H].

72. Ms. Nieuwkoop determined that the rebates owed to the District for the period of October 2022 to November 2024 totaled \$1,111.24, of which Petitioner had redeemed \$892.37. [Tr. Vol. I, pp. 218-219; Resp. Exh. H].

73. Of the four rebates issued during the 2024-2025 school year, three of those rebates were turned in by Petitioner to the District and submitted by the District. [Tr. Vol. I, pp. 106, 215; Resp. Exh. H].

74. Ms. Nieuwkoop highlighted in red the rebate ending in 3024 because she determined that Petitioner had not redeemed the entire amount of that rebate

check. The unredeemed amount for rebate ending in 3024 was \$81.85. [Tr. Vol. I, pp. 213-215; Resp. Exh. H].

75. For the rebate ending in 3024, Ms. Nieuwkoop acknowledged that her calculations for the rebate were incorrect because she had not factored in an \$859.98 return. [Tr. Vol. I, pp. 241-243; Resp. Exh. B, pp. 46-47; Resp. Exh. H].
76. For the rebate ending in 3015, there was a discrepancy between Ms. Nieuwkoop's calculations and Menards' calculations of the rebate amount. Ms. Nieuwkoop calculated the rebate amounts for rebate ending in 3015 by reviewing the two Menards purchase receipts and multiplying the total amount of the purchase by 11%, which amounted to \$50.71 and \$44.77, totaling \$95.48. In contrast, Menards' rebate website showed three rebates ending in 3015 amounting to \$8.91, \$2.97, and \$14.32 for a total of \$26.20. [Tr. Vol. I, pp. 264-269; Resp. Exh. F, pp. 12-13; Resp. Exh. G, p. 4; Resp. Exh. H].
77. On December 3, 2024, Superintendent Tuller had a meeting with Petitioner and High School Principal Brandon Bates. At the meeting, Petitioner was informed that he was being investigated for the possible misuse of the District's Menards rebates. Following the meeting, Superintendent Tuller sent email correspondence to Petitioner asking that he "bring any documentation of purchases you have made using these rebate funds" to an investigatory meeting to be held on December 5, 2024. [Tr. Vol. I, pp. 26-28; Tr. Vol. III, p. 673; Resp. Exh. U].
78. Petitioner called Mr. Lawn after the meeting held on December 3, 2024, and informed him that he was being investigated for his use of the Menards rebates. [Tr. Vol. III, pp. 677-678].
79. On December 4, 2024, Mr. Lawn wrote a letter on Petitioner's behalf and Petitioner provided the letter to the District. In his letter, Mr. Lawn stated as follows:

I understand that it has come under question about the rebates for Menards in regards [sic] to CTE Construction classes. When Michelle Strick was the Office Manager it was that all rebates and/or refunds would go in the General Fund. I insisted that the money that I brought in through my CTE program should go back in the CTE Program. After a lot of discussion they did agree and allowed me to send the rebates in, as long as I would use them for materials and supplies for the CTE Construction program.

When Dana took over as the Office Manager I informed her of what I was doing with the rebates and she was ok with it as long as it went back into the program. I would spend tens of thousands of dollars in the program every year there has to be some type of accounting trust.

[Resp. Exh. S, p. 1; Tr. Vol. II, p. 390].

80. Superintendent Tuller did not contact Mr. Lawn regarding his explanation of his past practice with the Menards rebates because she did not think it was relevant. [Tr. Vol. I, pp. 84-85, 114, 116].
81. On December 4, 2025, Petitioner provided Ms. Pena with six rebate receipts. Petitioner informed Ms. Pena that he was unsure of which receipts belonged to him and which ones belonged to the District. Ms. Pena turned the receipts over to Ms. Nieuwkoop. [Tr. Vol. II, pp. 337-338; Tr. Vol. III, p. 722; Resp. Exh. P].
82. During the District's investigation, no other receipts were provided by Petitioner. [Tr. Vol. I, pp. 37, 63].
83. On December 5, 2024, a meeting was held with Superintendent Tuller, Principal Bates, Petitioner, Petitioner's Union Representative, and Beth Sherman, Administrative Assistant for Superintendent Tuller. [Tr. Vol. I, p. 31; Tr. Vol. III, pp. 674-675; Resp. Exh. R].
84. At the meeting held on December 5, 2024, Petitioner acknowledged having the District's Menards rebates sent to his home address and indicated that he was using the rebates to purchase materials and supplies for the program. [Tr. Vol. I, p. 33; Tr. Vol. III, pp. 675, 678; Resp. Exh. R, p. 10].
85. Petitioner was unable to locate any of the rebate receipts that he had already redeemed so he instead provided Superintendent Tuller with a typed list of items he believed he had purchased using the rebates. Petitioner created the list of items from his memory or by looking at photographs of class projects that had been completed. The list of items included materials such as tape, masks, cutting board oil, WD40, lumber, gloves, stains, lacquers, brushes, blades, router bits, screws, etc. [Tr. Vol. I, pp. 33-35, 140; Tr. Vol. III, pp. 675-676, 678, 812; Resp. Exh. I].

86. The materials listed on Petitioner's itemized list were items that would typically be used in the classes taught by Petitioner. [Tr. Vol. II, pp. 441-443; Tr. Vol. III, p. 780].
87. At the meeting, Petitioner was asked if he had any documentation to establish that the rebates were used on District purchases. Petitioner stated that he was not good at keeping track of what he spent using his own money or using District rebates. Petitioner described his process as being like that of a general contractor and that he would throw receipts in the back of his truck. Petitioner also indicated it was sometimes easier to swipe his credit card for classroom related purchases rather than go through the process of using the District's credit card. [Tr. Vol. I, pp. 34-35; Tr. Vol. III, pp. 671, 740-741; Resp. Exh. I].
88. Superintendent Tuller showed Petitioner the list of Menards rebates that were combined to create each rebate check and asked which rebates were personal rebates and which were District rebates. Petitioner did not know for certain which rebates were his and which were the District's but stated that the larger rebates would have been District rebates. [Tr. Vol. I, pp. 36-38, 125; Resp. Exh. G; Resp. Exh. R].
89. In December 2024, Superintendent Tuller asked the union co-presidents, Susan Costello and Carson Manthey, to have Petitioner go to the Menards kiosk to print out receipts for purchases made with his own personal card or asked that he obtain his credit card statements. [Tr. Vol. I, pp. 59-60, 141; Resp. Exh. T].
90. Petitioner tried going to the Menards kiosk to see if he could determine how he spent the District's rebates; however, due to the volume of purchases he had over the last couple of years, he was unable to obtain any receipts at that time. [Tr. Vol. III, p. 681].
91. On December 16, 2024, Ms. Costello informed Superintendent Tuller that Petitioner was unable to find anything in support of his purchases. [Tr. Vol. I, pp. 59-60; Resp. Exh. T].
92. During the District's investigation, Superintendent Tuller also reviewed Petitioner's social media account and located photographs of wooden Christmas trees and charcuterie boards he posted for sale. The photographs of the Christmas trees also showed Petitioner's personal workshop in the background. [Tr. Vol. I, pp. 63-64; Tr. Vol. III, p. 725; Resp. Exh. W].

93. Superintendent Tuller had concerns that the tools seen in the background of Petitioner's social media photographs could have been purchased with District rebates. [Tr. Vol. I, p. 64; Resp. Exh. W].
94. Petitioner acknowledged that several of the items in his personal workshop would be the same or similar to the items he purchased for the classroom shop but disputed the allegation that he had purchased any of the items seen in the social media photographs with District funds. [Tr. Vol. III, pp. 725-727, 738-739; Resp. Exh. W].
95. On January 10, 2025, Mr. Lawn wrote another letter to the Board and Superintendent Tuller regarding his handling of the District's rebates and of the delivery of the barns or sheds made by the program. Superintendent Tuller did not respond to Mr. Lawn's January 10, 2025 letter. [Tr. Vol. I, p. 149; Tr. Vol. II, p. 391; Pet. Exh. 36].
96. On January 13, 2025, a meeting was held with District representatives and Petitioner. At the meeting, Superintendent Tuller informed Petitioner that her investigation was complete. Superintendent Tuller explained that she would be recommending a termination of employment and offered Petitioner a separation agreement in lieu of termination. [Tr. Vol. I, pp. 60-61, 278].
97. Petitioner was put on paid administrative leave after the January 13, 2025 meeting. [Tr. Vol. I, pp. 108-109].

Police Investigation of Petitioner's Use of District Rebates

98. On or about February 5, 2025, Superintendent Tuller contacted the Monroe County Sheriff's Office and provided them with her investigation materials related to potential embezzlement by Petitioner of the District's Menards rebates. [Tr. Vol. I, p. 62; Tr. Vol. III, p. 810; Resp. Exh. K, pp. 1, 7-8].
99. The investigation was assigned to Sergeant Jason Miller and Detective Skyler Riffle. [Tr. Vol. II, pp. 295-296].
100. On or about February 19, 2025, Detective Riffle contacted a Menards Corporate Investigator who was able to provide documentation related to the District's rebates in question. [Tr. Vol. II, p. 297; Resp. Exh. K, p. 13].
101. On February 20, 2025, Detective Riffle received five "rebate packets", which consisted of a "barcode history with a specifically associated barcode number." The barcode number consisted of both Petitioner's personal

rebates and the District's rebates and could be used to identify what items were purchased using the rebates. Detective Riffle was able to cross reference the bar code numbers "to identify what items the school's rebate receipts were applied to." [Tr. Vol. II, pp. 297-300; Resp. Exh. E; Resp. Exh. K, pp. 17-18].

102. For rebate barcode ending in 7737, the total value of the rebate was \$97.93. The portion of the rebate issued from the use of the District's Menards credit card amounted to \$24.19. The remaining value of the rebate was Petitioner's personal rebate. The rebate barcode was used on four separate purchases, which included "building materials, paint, tools, an air filter, cough drops, a vegetable chopper, tote, batteries, and dead down wind [sic] scent eliminating products." Detective Riffle determined that some of the items purchased using rebate barcode 7737 were not consistent with purchases made for the District's CTE program. [Tr. Vol. II, pp. 300-302, 311; Resp. Exh. E, pp. 22-26; Resp. Exh. K, p. 18].
103. For rebate barcode ending 0150, the total value of the rebate was \$467.95. The portion of the rebate issued from the use of the District's Menards credit card was \$440.16. The remaining value of the rebate was Petitioner's personal rebate. Detective Riffle reviewed the items purchased with rebate barcode 0150 and determined that the "building materials, tools, and other items" were items "potentially consistent with CTE program needs." [Tr. Vol. II, p. 302; Resp. Exh. K, p. 18].
104. For rebate barcode ending in 9005, the total rebate value was \$200.92. The portion of the rebate issued from the use of the District's Menards credit card amounted to \$49.73. The remaining value of the rebate was Petitioner's personal rebate. Detective Riffle reviewed the items purchased with the rebate which included "various tools, building supplies, wasp killer, windshield washer fluid, antifreeze, and a Mr. Heater "big buddy" heater." Detective Riffle "noted that the transaction that included the antifreeze, wiper fluid, and heater (among other items) used \$109.58 toward the total from the rebate" and the remaining \$42.79 was paid for with Petitioner's debit card. Detective Riffle indicated that he did not have anything to suggest whether those items were purchased for personal use or District use. [Tr. Vol. II, pp. 302-303; Resp. Exh. K, p. 18].
105. For rebate barcode ending in 7247, the total value of the rebate was \$156.16. The portion of the rebate issued from the use of the District's Menards credit card amounted to \$27.07. The remaining value of the rebate was Petitioner's personal rebate. The total value of the rebate was used to

purchase an electric fireplace and the remaining balance of \$33.83 was covered by a different rebate barcode ending in 2500. [Tr. Vol. II, p. 303; Resp. Exh. E, p. 1; Resp. Exh. K, p. 18].

106. For rebate barcode ending in 2500, the total value of the rebate was \$339.93. The portion of the rebate issued from the use of the District's Menards credit card amounted to \$256.13. The remaining value of the rebate was Petitioner's personal rebate. The rebate was used on three separate purchases. The first purchase was to cover the remaining balance of \$33.83 on the electric fireplace. The second purchase was for items such as "beverages, storage containers, and other miscellaneous items." The third purchase was for items that included "clothing, tools/supplies, a bamboo charcuterie board, a power bank, and a 5600w 224cc generator." For the generator purchase, \$255.91 of the rebate was used and Petitioner used his personal debit card to pay for the remaining balance of \$109.82. [Tr. Vol. II, pp. 303-304; Resp. Exh. E, pp. 1-2, 5-6; Resp. Exh. K, p. 18].
107. Based on his review of the five rebate packets, Detective Riffle concluded that approximately \$790.00 worth of District rebates were commingled with Petitioner's rebates; however, he was unable to determine with any certainty which items were personal purchases and which items were District purchases. [Tr. Vol. II, pp. 304-305, 324].
108. Petitioner declined to provide a statement to the police during their investigation. [Tr. Vol. II, p. 330; Tr. Vol. III, p. 765; Resp. Exh. K, p. 9].
109. Petitioner acknowledged that certain purchases that were made using the five rebate packets were personal purchases, which included the heater, fireplace, windshield washer fluid, antifreeze, and bamboo charcuterie board. [Tr. Vol. III, pp. 694, 706, 772-774].
110. Petitioner indicated that the items he purchased such as building materials, paint, tools, gloves, carts, and storage boxes were District purchases. [Tr. Vol. III, pp. 704-705, 707-714, 773; Resp. Exh. E].
111. Petitioner bought the generator for the CTE program. Petitioner intended to use the generator for community outreach projects and campus projects, such as the ramp they had built for the elementary school. [Tr. Vol. III, pp. 643-644, 694-696].
112. As of the date of the hearing, the generator was still located at Petitioner's house. [Tr. Vol. III, p. 699].

113. On one occasion during the 2023-2024 school year, Petitioner put gas in the generator and brought it to the school to be used by a teacher to clean out the football sheds. When the teacher was finished with the generator, Petitioner took the generator back to his house to drain out the gas. Petitioner did not use it on any other occasion or for personal use. [Tr. Vol. III, pp. 696-699, 757-758].
114. On February 26, 2025, Detective Riffle met with Superintendent Tuller to go over some of the items purchased with the Menards rebates. [Tr. Vol. I, pp. 124-125; Tr. Vol. II, p. 305; Resp. Exh. K, p. 19].
115. Superintendent Tuller did not review the rebate purchase receipts line by line, but she did go to the CTE room to look for some of the larger items that were purchased such as the generator and fireplace. [Tr. Vol. I, pp. 124-126].
116. Superintendent Tuller did not show the itemized list of purchases she received from Detective Riffle to Petitioner to have him identify which purchases were personal purchases and which items were District purchases. [Tr. Vol. I, p. 125; Tr. Vol. III, p. 693; Resp. Exh. K, p. 18].
117. Superintendent Tuller acknowledged that some of the items purchased by Petitioner could have been items used in a CTE classroom. Superintendent Tuller indicated that some of the items also could have been used in his personal workshop; however, she acknowledged she had no evidence that the items in his personal workshop were purchased with District funds. [Tr. Vol. I, pp. 124-125, 166-168].
118. At the conclusion of his investigation, Detective Riffle determined there was probable cause to believe Petitioner had embezzled more than \$200.00 but less than \$1,000.00 of District funds by purchasing items such as a heater, a fireplace, and a generator. [Tr. Vol. II, pp. 308, 319].

May 27, 2025 Board Meeting

119. On May 20, 2025, Superintendent Tuller wrote a letter to Petitioner indicating her intent to file tenure charges against him with the Board at the Board meeting scheduled for May 27, 2025. The letter stated, in part, "upon your request, the charges and any responsive material or information submitted by you will be considered by the Board of Education in a closed

session before deciding whether to proceed upon or modify the enclosed tenure charges.” [Pet. Exh. 42, pp. 1-2].

120. Before the May 27, 2025 Board meeting, Mr. Lawn emailed a letter to each individual Board member to provide them with some context as to the use of the Menards rebates. The letter indicated, in part, that the District had permitted Mr. Lawn to personally send in the rebates for the District “as long as the funds were used to benefit the program.” Mr. Lawn further stated in his letter that he passed on these procedures to Petitioner “that mirror the same practices I followed for over a decade.” [Pet. Exh. 35; Tr. Vol. II, pp. 391-394].
121. At the May 27, 2025 Board meeting, the Board reviewed the tenure charges against Petitioner for the first time. Petitioner spoke at the Board meeting as did other members of the community, including Mr. Lawn. The Board decided to table the vote on the tenure charges until the full Board could be present. [Tr. Vol. I, pp. 76-77, 171; Tr. Vol. II, p. 394; Tr. Vol. III, pp. 579, 581, 603, 609].
122. Following the May 27, 2025 Board meeting, Superintendent Tuller contacted Mr. Lawn to correct him regarding a comment he made at the Board meeting regarding her purchasing a shed from the CTE program. Mr. Lawn agreed to speak with Superintendent Tuller and asked if they could meet in person. [Tr. Vol. I, p. 152; Tr. Vol. II, p. 395].
123. On May 29, 2025, a meeting was held with Principal Bates, Superintendent Tuller, Mr. Lawn, and Mr. Lawn’s wife. During the meeting, Superintendent Tuller informed Mr. Lawn that she did not purchase a shed as he had stated at the Board meeting, but that her friend had purchased a shed and that she had acted as an intermediary. At the meeting, Mr. Lawn also explained that when he was the CTE teacher, he had cut off the Menards rebate receipts and personally submitted the receipts in his name. [Tr. Vol. I, pp. 151-154; Tr. Vol. II, pp. 395-398, 402-403; Resp. Exh. S, pp. 2-3].
124. During the May 29, 2025 meeting, Mr. Lawn indicated that he never commingled his personal rebates with the District’s rebates. [Tr. Vol. II, p. 402].
125. Superintendent Tuller asked Mr. Lawn at the May 29, 2025 meeting whether he had ever used the District’s rebates for personal purchases. Mr. Lawn replied that he always used the rebate money on District purchases but stated that he did not always use the rebate checks strictly on District

purchases. For example, Mr. Lawn would sometimes keep a District rebate to reimburse himself for items he had bought for the District with his personal money. [Tr. Vol. II, pp. 399-400].

126. Mr. Lawn's explanation did not change Superintendent Tuller's opinion regarding Petitioner's actions because she did not have any documentation to show how Mr. Lawn was spending the District's rebates. [Tr. Vol. I, pp. 154-155].

127. Superintendent Tuller did not ask Mr. Lawn whether he turned in receipts from purchases he made with the District's rebates. [Tr. Vol. I, pp. 155-156].

June 11, 2025 Board Meeting

128. On June 2, 2025, Superintendent Tuller wrote a second letter to Petitioner indicating her intent to file tenure charges against him with the Board at the Board meeting scheduled for June 11, 2025. The letter again stated, in part, "upon your request, the charges and any responsive material or information submitted by you will be considered by the Board of Education in a closed session before deciding whether to proceed upon or modify the enclosed tenure charges." [Pet. Exh. 42, pp. 3-4].

129. On June 11, 2025, the Board meeting was held as scheduled. [Pet. Exh. 37].

130. The two proposed tenure charges against Petitioner were: i.) Embezzlement/Fraudulent Conversion of School Funds; and ii.) Economic Self-Dealing/Conflict of Interest. [June 11, 2025 Tenure Charges].

131. At the tenure hearing held on September 4, 2025, Respondent voluntarily dismissed Charge II from the June 11, 2025 Tenure Charges entitled "Economic Self-Dealing Conflict of Interest." [Tr. Vol. III, pp. 540-541].

132. Charge I of "Embezzlement/Fraudulent Conversion of School Funds" alleged that Petitioner "removed without administrative permission from the receipts an 11% rebate option" and that he directed Menards to "send them directly to him personally with a rebate check issued to him." The charges went on to state that Petitioner "admittedly" spent \$892.36 of the District's rebate funds "during personal trips to the store . . ." The charges further stated that Petitioner "was unable or unwilling to provide school or law enforcement personnel with records of the \$892.36 in purchases . . . or

evidence that those purchases were used for school purposes.” [June 11, 2025 Tenure Charges, Charge I, ¶¶ 3, 4, 6, 7].

133. The June 11, 2025 Tenure Charges under Charge I alleged that Petitioner violated the following statutes, policies, and ethical codes:

- a. MCL 750.157u: Causing device holder to be charged or overcharged (felony).
- b. MCL 750.175: Embezzlement by a public officer, agent, or servant (felony).
- c. MCL 750.174: Embezzlement by agent, servant, or employee (misdemeanor or felony).
- d. MCL 750.218: False pretenses with intent to defraud (misdemeanor or felony).
- e. MCL 750.248: Making, altering, forging, or counterfeiting public record (felony).
- f. Board Policy 4201: Employee Ethics and Standards.
- g. Board Policy 4220: Use or Disposal of District Property.
- h. Board Policy 3209: Debit/Credit Cards.
- i. The Michigan, NEA and Model Codes of Educational Ethics.

[June 11, 2025 Tenure Charges, Charge I, ¶ 9].

134. At the June 11, 2025 Board meeting, the District’s counsel instructed the Board members, in part, as follows:

. . . the Teacher Tenure Act forbids you from weighing the facts or looking at the evidence. That’s not what is supposed to happen. [Petitioner] doesn’t lose his job tonight, there is no weighing the facts or evidence, the law forbids it. The law says, Board of Education, assuming that the facts are true, is the proposed discipline appropriate? Not if the facts are true, if you decide they are true, assuming they are true, is the proposed discipline appropriate . . . What happens next under the Teacher Tenure Act

is that [Petitioner's] attorney and I talk to a judge. And we show the judge the evidence. And we everybody gets to testify who wants to, for them, for us. And all of the materials that have been gathered over seven months, a seven-month investigation by the District, all of that goes to this judge and they decide . . .

[Pet. Exh. 37, 1:24:40 to 1:27:38; Tr. Vol. III, pp. 590-591].

135. At the June 11, 2025 Board meeting, Petitioner's counsel attempted to provide the Board members and Superintendent Tuller documentation of Petitioner's receipts showing he had purchased several items for the District using his personal credit card for which he did not seek reimbursement. Petitioner's counsel also indicated at the Board meeting that she had been attempting to provide these receipts to the District's counsel in the weeks leading up to the Board meeting but stated that the documentation had been refused. [Tr. Vol. I, pp. 144-146; Tr. Vol. III, pp. 593, 628, 681-683; Resp. Exh. J; Pet. Exh. 37, 1:50:00 to 1:50:43].
136. In response to Petitioner's counsel's attempt to provide the additional documentation, the District's counsel stated that Petitioner's counsel could place the documents in front of the Board members but instructed the Board members that they were not to be "weighing the evidence this evening." [Pet. Exh. 37, 1:50:43 to 1:51:37].
137. Based on the advice from counsel, neither Superintendent Tuller nor the Board members reviewed the documents presented by Petitioner's counsel at the June 11, 2025 Board meeting. At the end of the Board meeting, Superintendent Tuller collected the copies given to the Board members and put them in the shredder. [Tr. Vol. I, pp. 144-145, 162-163; Tr. Vol. III, pp. 592-593, 617; Resp. Exh. J].
138. Board members John Waller and Chandra Fowler had never previously been involved in the tenure process. [Tr. Vol. III, pp. 577, 609].
139. Board Member Waller's understanding of the Board's role in the tenure process was not to review the evidence but to simply assume the allegations are true and to vote on whether the tenure charges should advance to a hearing in front of an Administrative Law Judge. [Tr. Vol. III, pp. 587-588, 590-591, 594].
140. Board Member Waller acknowledged that he was not aware of what evidence was obtained and reviewed by Superintendent Tuller as part of her

investigation that led to the tenure charges. He indicated that the only information he was given was that there was rebate money that should have been spent at the school but was not. [Tr. Vol. III, pp. 582, 584-587, 593-595, 599].

141. Board Member Waller received Mr. Lawn's letter that was sent to the Board prior to the May 27, 2025 meeting. Board Member Waller did not find Mr. Lawn's letter to be relevant because it was his understanding that Mr. Lawn was using the rebates for the program and Petitioner was not. [Tr. Vol. III, pp. 584-585; Pet. Exh. 35].
142. Board Member Waller voted "no" with respect to proceeding on the tenure charges against Petitioner. [Tr. Vol. III, pp. 594-595].
143. Board Member Fowler's understanding of the Board's role was not to review evidence but rather to assume the charges were true and, if true, whether they should proceed to a hearing. [Tr. Vol. III, pp. 617, 627].
144. Board Member Fowler did not review any of the evidence that supported the charges against Petitioner but did have a private conversation with Superintendent Tuller after one of the Board meetings where she reviewed some of the receipts. During their conversation, Superintendent Tuller informed Board Member Fowler that she had documentation of how all the rebate money was spent but Superintendent Tuller did not indicate how she determined what purchases were made on District items and what purchases were personal to Petitioner. [Tr. Vol. III, pp. 617-621].
145. Board Member Fowler voted "no" with respect to proceeding on the tenure charges against Petitioner. Board Member Fowler voted "no" because she did not know what occurred during the investigation and believed that the matter first needed to go through the criminal court system. [Tr. Vol. III, pp. 625-627].
146. Neither Board Member Waller nor Board Member Fowler had concerns about Petitioner having the District's rebates mailed to his home. [Tr. Vol. III, pp. 585, 616].
147. On June 11, 2025, the Board voted to proceed on the tenure charges by a five to two vote. [Pet. Exh. 37, 2:01:10 to 2:02:02].
148. After the June 11, 2025 Board meeting, Superintendent Tuller met with the Board for her evaluation. During the evaluation, Superintendent Tuller

apologized to the Board that they “felt blindsided by the tenure information”. Superintendent Tuller made this apology based on the Board members’ lack of understanding of the tenure process. [Pet. Exh. 38; Tr. Vol. I, pp. 169-170].

149. On July 14, 2025, Petitioner pled no contest to the charge of embezzlement by an agent or trustee of less than \$200. Before entering the plea, Petitioner indicated his understanding that he had a right to a trial and that he would be presumed innocent until proven guilty beyond a reasonable doubt. After entry of the plea, the Court withheld acceptance of the plea pending the completion of the diversion described in the plea agreement. [Tr. Vol. III, p. 765; Resp. Exh. Z, pp. 6-8].

150. At the time he entered the no contest plea, Petitioner’s understanding was that if he met the conditions of the plea agreement, which constituted the payment of a court fine, participating in a class, and paying restitution if any was ordered, then the criminal matter would be dismissed. [Tr. Vol. III, pp. 806-807; Resp. Exh. Z, p. 10].

151. Petitioner does not believe that he misspent the District’s rebates because the value of the rebates went back to the District when he purchased items with his own personal funds and when he spent his own rebate money on items for the District’s program. Petitioner indicated that in retrospect he would have kept a more formal accounting of how the rebates were being used. [Tr. Vol. III, pp. 730-731].

Conclusions of Law

Petitioner’s Tenure Status

It is Petitioner’s burden to prove that he or she achieved tenure. *Babcock v Board of Education of the Kent Intermediate School District* (91-13). Here, Petitioner met his burden of proving he is a tenured teacher. Petitioner was employed as a teacher within his area of certification at Woodhaven schools for ten years. Petitioner was also employed within his area of certification with the District for over two years, during which time it was undisputed that he achieved tenure. These time periods exceed the probationary periods set forth in MCL 38.81 and exceed two years with the current District which meets the requirements for tenure under MCL 38.92.

Legal Standard and Proposed Tenure Charge against Petitioner

Respondent bears the burden of proving each of the allegations set forth in their Tenure Charges. *Wescott v Civil Service Commission*, 298 Mich App 158 (2012). Only those charges filed against Petitioner may form the basis for discipline. *Abrahams v Ann Arbor* (81-3). When a teacher contests the charges against them, the district is required to prove the charges by a preponderance of the evidence. *Luther v Board of Education of Alpena Public Schools*, 62 Mich App 32 (1975). Under the Teacher Tenure Act, a teacher may be discharged or demoted only for a reason that is not arbitrary or capricious. MCL 38.101. The district bears the burden of proof to establish its case by a preponderance of the evidence. *Craig v Larson*, 432 Mich 346, 352 (1989).

As the Michigan Supreme Court has stated, “[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence.” *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985). A “preponderance of the evidence” means that evidence which, when weighed with that opposed to it, has more convincing force resulting in a greater probability that the alleged misconduct occurred. See *Thomas v Miller*, 202 Mich 43 (1918); *Giddings v Saginaw Township Community Schools Board of Education* (92-1).

Arbitrary and Capricious Standard

The issue in this matter is whether the Respondent has established the alleged charge by a preponderance of the evidence and, if so, whether Petitioner’s discharge is the appropriate discipline for that misconduct or whether the discharge is arbitrary or capricious and a lesser form of discipline is appropriate.

A decision is arbitrary or capricious if it is based on whim or caprice and is not considered principled reasoning. *Cona v Avondale School Dist* (11-61) *affirmed* 303 Mich App 123 (2013) citing to *Chrisdiana v Dep’t of Community Health*, 278 Mich App 685 (2008).

Cona goes on to note:

Notwithstanding that the arbitrary or capricious standard of review is highly deferential, our review is not a mere formality and we are not required merely to rubber stamp the decision of a controlling board. Our responsibility in this case is to review the quality and quantity of the evidence and to determine if the decision to discharge appellant is the result of a deliberate, principled reasoning process supported by evidence. If there is a reasoned explanation for the decision, based on the evidence,

the decision is not arbitrary or capricious. If a controlling board overlooked important evidence or erred in appreciating the significance of evidence, its decision may be determined to be arbitrary or capricious.¹³

The undersigned ALJ thoroughly reviewed the evidence in the record, including the sworn testimony and admitted exhibits. The undersigned ALJ's analysis and conclusions of law as to the tenure charge are provided below.

Charge I: Embezzlement/Fraudulent Conversion of School Funds

Charge I, Paragraph 9(H): Alleged Violation of Board Policy 3209: Debit/Credit Cards

With respect to Charge I, Respondent's tenure charge first alleges that Respondent "discovered that since the 2022-2023 school year, [Petitioner] turned in altered receipts to the School District. Specifically, he removed without administrative permission from the receipts an 11% rebate option Menards extended to those authorized purchases." [Tenure Charge I, ¶ 3, p. 2]. The charge goes on to allege that Petitioner "without permission or authority retained the rebated school funds from Menards by directing the company to send them directly to him personally with a rebate check issued to him. In that regard, he further directed Menards to send the rebated school funds directly to his home." [Tenure Charge I, ¶ 4, p. 2].

The District's Policy No. 3209 Debit/Credit Cards states the following regarding documentation of receipts for items purchased by authorized users of the District's credit card:

An authorized user must submit to the Superintendent or designee an itemized receipt. The itemized receipt must include the name of the business, the date of purchase, a description of each item and its purpose, and the price. A non-itemized receipt alone is not sufficient.

[Resp. Exh. Y, p. 1].

It was undisputed by the parties that Petitioner returned all itemized receipts from his use of the District's credit card to the appropriate designee, which in this case was the high school secretary. [Tr. Vol. I, pp. 186, 216; Tr. Vol. II, p. 343; Tr. Vol. III, pp. 660-661]. The portion of the receipt at issue here was the rebate receipt. The record evidence establishes that the rebate receipt was located below a dotted line at the bottom of the itemized receipt. The dotted line identified the portion of the receipt that was to be cut off and sent to Menards to receive the rebate. [Tr. Vol. I, pp. 199-200].

¹³ Internal citations omitted.

The rebate receipt does not include an itemization of what was purchased but rather shows the total amount of the purchase and the total amount of the rebate. [Tr. Vol. I, p. 200]. Since the rebate receipt is not an itemized receipt, the evidence establishes that Petitioner followed the District's policy with respect to returning itemized receipts as indicated in District Policy No. 3209(C).

Next, the District's Policy No. 3209 Debit/Credit Cards, specifically subparagraph E, is the only policy that mentions rebates by stating that "[a]ny reward points, rebates, or other benefits received from a third-party credit card company are the District's property." [Resp. Exh. Y, p. 2]. Policy No. 3209(E) does not include a requirement to submit rebate receipts to the District. [See Resp. Exh. Y, p. 2]. Furthermore, the policy provides no directive as to whether an authorized credit card user must keep some form of documentation related to rebates nor does it state that receipts must be submitted for items purchased with rebate funds.

Not only does the District's policy not contain any specific provisions regarding the return of rebate receipts, but the evidence also establishes that the District permitted Petitioner's predecessor, Mr. Lawn, to personally handle Menards rebate receipts and checks. Mr. Lawn offered credible testimony regarding the authorized processes he followed with respect to the Menards rebates. Mr. Lawn testified that in 2012, he began the practice of personally mailing in Menards rebates and having the rebate checks sent directly to his home address. [Tr. Vol. II, p. 376]. Mr. Lawn began this practice after first speaking with the former Business Office Manager, Michelle Strick. [Tr. Vol. II, pp. 376-377]. Mr. Lawn further credibly testified that he was never told by Ms. Strick that he could not handle the rebates in this manner. [Tr. Vol. II, p. 377]. Mr. Lawn indicated that he wanted to personally handle the Menards rebates to ensure that the money was going back to the CTE program. [Tr. Vol. II, p. 376].

Respondent argues that there was no evidence or testimony at the hearing that rebated CTE funds were ever misdirected. [Resp. Brief, p. 5]. However, this assertion is not entirely accurate. In this matter, Mr. Lawn wrote two separate letters to the District stating that "all rebates and/or refunds would go into the General Fund" and that he "insisted that the money that [he] brought in through [his] CTE program should go back to the CTE Program." [Pet. Exh. 36; Resp. Exh. S, p. 1]. Mr. Lawn's testimony that the CTE money was going into the general fund was also confirmed by another former Business Office Manager, Ms. Nieuwkoop. [Tr. Vol. I, pp. 231-233]. Even if Mr. Lawn's concerns about losing the rebates to the general fund was unfounded, this is irrelevant since the evidence establishes that Mr. Lawn obtained permission from the Business Office to personally handle the rebates.

Next, although Ms. Strick denied that Mr. Lawn had ever asked to use a different process for the Menards rebates, she also acknowledged she did not recollect having

any conversations with Mr. Lawn about the rebates nor did she recall what District credit cards Mr. Lawn used. [Tr. Vol. III, pp. 834, 840-842]. Furthermore, Ms. Strick did not recall any specific occasions when Mr. Lawn had not submitted a rebate receipt. [Tr. Vol. III, p. 843]. Ms. Strick's inability to recall any specifics as it related to Mr. Lawn's use of rebates or credit cards calls into question the reliability of her testimony. The undersigned finds Mr. Lawn's recollection of his conversation with Ms. Strick to be more credible, especially since Mr. Lawn engaged in this practice with the rebates for ten years, which also included a time period after Ms. Strick's employment with the District ended.

After Ms. Strick retired from the District in 2019, Mr. Lawn also obtained permission to continue the same practice with the Menards rebates from the new Business Office Manager, Dana Blair. [Tr. Vol. II, pp. 390-391; Pet. Exh. 36; Resp. Exh. S, p. 1]. Mr. Lawn's credible testimony was unrebutted as the District did not call Ms. Blair to testify as a witness. Mr. Lawn's testimony as to how he was handling the Menards rebates was further corroborated by the former high school secretary, Lynn Ferguson. Ms. Ferguson, who was the high school secretary during Ms. Blair's employment, testified that she received the District's credit card receipts but never handled Menards rebates nor did she receive any rebates from Mr. Lawn. [Tr. Vol. III, pp. 543-544, 546-547]. Ms. Ferguson credibly testified that she was never told that the Menards receipts should include rebates at the bottom of the receipts. [Tr. Vol. III, p. 548].

Mr. Lawn's testimony regarding his permission to handle Menards rebates in this fashion was further substantiated by Ms. Nieuwkoop. Ms. Nieuwkoop testified that she was aware that Mr. Lawn had permission from the prior Business Office Manager to have the District's rebates sent to his home. [Tr. Vol. I, pp. 188, 224-225]. Thus, it is apparent from the evidence presented that the District's Business Office was well aware of Mr. Lawn's long-established practice of cutting off and mailing in the Menards rebate receipts and having the rebate checks sent to his home.

It was further undisputed by the parties that this same practice was passed on to Petitioner from Mr. Lawn. Mr. Lawn explained to Petitioner the process he followed regarding the rebates over the last ten years and informed Petitioner that he would personally mail in the rebates and have the rebate checks mailed to his home to ensure the rebates were coming back to the program. [Tr. Vol. II, pp. 382-383; Tr. Vol. III, pp. 657-658, 661-663].

While Petitioner could have relied solely on Mr. Lawn's guidance, Petitioner instead chose to further ensure he was following the proper procedures by asking Ms. Ferguson how to handle rebates. Since Ms. Ferguson did not handle the rebates, she directed Petitioner to speak with Jennifer Darr, the former accounting assistant in the District's Business Office. [Tr. Vol. III, pp. 548-549, 552, 663]. Petitioner then spoke with Ms. Darr

about how to handle the rebates, who confirmed that he could follow the same procedure employed by Mr. Lawn. [Tr. Vol. III, pp. 662-663].

Petitioner further offered credible, un rebutted testimony to establish that he did not receive formal training on how to handle finances for the District. [Tr. Vol. III, pp. 654-656]. Ms. Nieuwkoop also noted Petitioner's apparent lack of training or guidance on how to handle purchasing for the District in her email dated March 8, 2023. [Resp. Exh. N, p. 1]. As such, the undersigned finds that Petitioner reasonably acted upon the guidance he received from Mr. Lawn and Ms. Darr.

Respondent notes that Mr. Lawn "did not testify he advised Petitioner how to record and report how the rebates were spent." [Resp. Brief, p. 4]. While that may be the case, Mr. Lawn also testified that he did not turn in receipts to the District for the items he purchased using the rebate checks as he never received a directive to do so. [Tr. Vol. II, pp. 372, 378, 382, 451-452]. Similarly, there was no evidence that Petitioner received any such directive. Even Ms. Nieuwkoop's email from November 5, 2024, did not instruct Petitioner to turn in receipts for what he purchased using the District's rebates. [Resp. Exh. N, p. 4].

When Superintendent Tuller learned from Petitioner that he obtained permission from Ms. Darr to handle rebates in this matter, she decided to reach out to Ms. Darr to verify the accuracy of this statement. Superintendent Tuller asserted that Ms. Darr "didn't indicate he could have those sent to his home and used for whatever he wanted" but that she did state to "do what Keith does." [Tr. Vol. I, pp. 115-116]. Remarkably, Superintendent Tuller did not reach out to Mr. Lawn after speaking with Ms. Darr to determine what process Mr. Lawn had been following during his employment. [Tr. Vol. I, p. 116]. When asked why she did not contact Mr. Lawn, Superintendent Tuller testified that she did not feel the need to contact Mr. Lawn as he was a retiree. [*Id.*]. The undersigned finds this testimony lacks credibility as Superintendent Tuller apparently had no issue with contacting Ms. Darr, who was a former employee at that time. Superintendent Tuller also spoke with Katelyn Hodge, the high school secretary, who confirmed that Petitioner turned in Menards receipts without the rebates; however, Superintendent Tuller acknowledged she did not ask Ms. Hodge why she was accepting the receipts without the rebates. [Tr. Vol. I, pp. 114-115].

Superintendent Tuller also offered contradictory testimony regarding her knowledge of Mr. Lawn's former process of submitting the rebates. For example, Superintendent Tuller initially acknowledged in her testimony that she had received a letter from Mr. Lawn during her investigation where he shared his process; however, she later testified that she had "never heard" that Mr. Lawn was also cutting off the rebate receipts. [Tr. Vol. I, pp. 58-59, 114; Resp. Exh. S, p. 1]. The undersigned does not find this to be

credible since Mr. Lawn's letters to Superintendent Tuller and the Board indicated that he was submitting the rebates himself. [Pet. Exh. 35; Pet. Exh. 36; Resp. Exh. S, p. 1].

Superintendent Tuller further testified that her concern was where the money was being spent and the lack of documentation for those purchases. [Tr. Vol. I, p. 117]. Superintendent Tuller stated that the District could have "easily changed the fact that they were mailed to [Petitioner's] home." [Tr. Vol. I, pp. 116-117]. Based on this testimony, it appears that Superintendent Tuller was not especially concerned about the process of Petitioner mailing in rebates or receiving the rebate checks at his home, which is directly in contrast with the allegations stated in the tenure charges. [Tenure Charge I ¶¶ 3-4, p. 2].

Regardless of this inconsistent testimony, Respondent continued to maintain that Petitioner failed to follow a directive by Ms. Nieuwkoop to submit the Menards rebates through the District. [Resp. Brief, pp. 4-5; See Tr. Vol. I, p. 187]. However, Ms. Nieuwkoop admitted that she was unable to provide dates for when these alleged conversations occurred with Petitioner. [Tr. Vol. I, p. 227]. Petitioner also disputed that Ms. Nieuwkoop had instructed him to submit the rebates to the District prior to her November 5, 2024 email. [Tr. Vol. III, pp. 717-718; Resp. Exh. N, p. 4].

The undersigned finds Petitioner's testimony to be more persuasive than Ms. Nieuwkoop's testimony for the following reasons. First, Ms. Nieuwkoop sent an email to Petitioner on March 8, 2023, stating, "[m]y impression is when you were hired, you were thrown into your position and given very little to no guidance." [Tr. Vol. I, pp. 182, 222, Resp. Exh. N, p. 1]. In this email, Ms. Nieuwkoop reviewed purchasing approvals with Petitioner, but she did not give Petitioner any instructions on how to handle rebates. [Resp. Exh. N, p. 1].

Next, Ms. Nieuwkoop claimed that she had informed her assistant, Amanda Pena, that she had verbally directed Petitioner to submit the rebates to the District. [Tr. Vol. I, p. 226]. However, Ms. Pena contradicted Ms. Nieuwkoop's testimony by stating that she did not recall having a conversation with Ms. Nieuwkoop about Petitioner's receipts. [Tr. Vol. II, p. 343]. Ms. Nieuwkoop also testified that she could have had this conversation with Ms. Darr but acknowledged that she did not have any dates for when this alleged conversation occurred. [Tr. Vol. I, pp. 226-227]. The undersigned is doubtful that Ms. Nieuwkoop had this conversation with either Ms. Pena or Ms. Darr given that Ms. Nieuwkoop acknowledged that she never received any notifications from either of them stating that Petitioner was not turning in the rebate receipts. [Tr. Vol. I, p. 227].

Furthermore, Petitioner notes that Ms. Nieuwkoop testified she had Ms. Pena check her rebate spreadsheet for accuracy; however, Ms. Pena rebutted this testimony. [Pet.

Brief, pp. 13, 18-19; See Tr. Vol. I, p. 270; Tr. Vol. II, p. 340]. For the reasons stated above, the undersigned finds Ms. Nieuwkoop's testimony to lack credibility.

When Ms. Nieuwkoop sent an email to Petitioner on November 5, 2024, stating, "don't forget Menards rebates have to go through the school", Petitioner replied that he was "told past practice was to submit the rebates myself and it would ensure they would come back to our program." [Resp. Exh. N, p. 4]. Petitioner's response to Ms. Nieuwkoop was consistent with his testimony and Mr. Lawn's testimony. Ms. Nieuwkoop replied to Petitioner by stating, "[i]f we submit it with a different name on it, the rebate will come under your name. Amanda said she submitted one for an order you did online that way. We would hold onto them and give them to you when you get the Menards card." [Resp. Exh. N, p. 4; Tr. Vol. I, pp. 192-193, 262]. It is important to note that in Ms. Nieuwkoop's response to Petitioner, she made no mention of prior discussions she had with him regarding the rebates as she claimed she had done at the hearing. Additionally, if indeed Ms. Nieuwkoop had the prior discussions with Petitioner as she claimed, Ms. Nieuwkoop offered no explanation as to why she did not reference these alleged conversations in response to Petitioner's explanation of how he was handling the rebates. It was further undisputed that after this email exchange with Ms. Nieuwkoop, Petitioner followed the directive and stopped the practice of personally submitting the District's rebates. [Tr. Vol. I, p. 137; Tr. Vol. III, pp. 719, 721].

The Commission addressed conduct related to past practice in *Gilbreth v Board of Education for the Detroit Public Schools* (97-19), which stated, in pertinent part:

. . . it is not reasonable to discipline Mr. Gilbreth for violating a school policy that is commonly disregarded by teachers without disciplinary consequences to them. School policy must be evenly applied to all teachers in the school. *VanVliet v Lakeview Community School District* (76-36). If a school's administration intends to enforce a policy which it had not been enforcing, it should warn the teachers of its intent to enforce the policy before penalizing them for a violation.

As stated above, the District had no written policy regarding the submission of rebate receipts. Even if such a policy existed, the practice of cutting off and mailing in the rebates and subsequently receiving the rebate checks to Petitioner's home address was an established practice put into place by Petitioner's predecessor. The evidence establishes that the District's Business Office was aware of this practice and that Mr. Lawn was never disciplined for engaging in such conduct. Thus, it is unreasonable for the District to discipline Petitioner for engaging in the same behavior as Mr. Lawn. As further noted above, the undersigned does not find that a preponderance of the evidence establishes that Petitioner was made aware of a change to the procedures previously followed by Mr. Lawn prior to Ms. Nieuwkoop's November 5, 2024 email.

Finally, under the District's Policy No. 3209 Debit/Credit Cards, it states that the "Superintendent or designee is responsible for . . . generally overseeing compliance with this Policy." [Resp. Exh. Y, p. 1]. Upon review of the evidence presented, there little to no oversight of this policy by either the Superintendent or the designee related to Petitioner's submission of the rebate receipts until November 2024, after which Petitioner followed the directive to stop mailing the Menards rebates himself.

Therefore, Respondent did not prove by a preponderance of the evidence that Petitioner's conduct as alleged under Charge I, Paragraphs 3 and 4, were in violation of Board Policy No. 3209.

Charge I, Paragraphs 9(F) and (G): Alleged Violations of Board Policy 4201: Employee Ethics and Standards and Board Policy 4220: Use or Disposal of District Property

Charge I further alleges that Respondent "exercised the rebates withheld from the School District without permission" and that the "rebated school refund receipts taken by [Petitioner] from school Menards purchases totaled . . . \$1,111.23. Of that amount, [Petitioner] provided only . . . \$218.87 of those rebate receipts back to the School District." [Tenure Charge I, ¶ 4-5, p. 2]. Charge I goes on to allege that Petitioner "admittedly spent \$892.36 of the rebated school funds during personal trips to the store without providing the School District with any record of those purchases." [Tenure Charge I, ¶ 6, p. 2]. "[Petitioner] therefore willingly, unlawfully, and criminally retained \$892.36 of school funds and spent this amount on non-school purchases." [Tenure Charge I, ¶ 8, p. 2].

The District's Policy No. 4220 "Use or Disposal of District Property" states, in part, "[e]mployees are prohibited from using District property for personal use unless the Superintendent or designee approves the use in advance . . ." [Resp. Exh. Y, p. 10]. The District's Policy No. 4201 Employee Ethics and Standards¹⁴ states, in pertinent part, that employees must be "[a]ppropriately using District funds, resources, and technology" and are prohibited from using their employment "to obtain personal, professional, political, or financial gain." [Resp. Exh. Y, pp. 3-4].

It is first noted that there was no evidence presented by Respondent that Petitioner "admittedly spent \$892.36 of the rebated school funds during personal trips". [Tenure Charge I, ¶ 6, p. 2]. However, Petitioner did admit to commingling both his personal rebates with the District's rebates and admitted that a portion of those commingled

¹⁴ Superintendent Tuller also testified that Petitioner violated District Policy No. 4201(B)(4) and (9), but only with respect to the allegations contained in Charge II. [See Tr. Vol. I, pp. 70-71; Resp. Exh. Y, pp. 4-5]. Since Charge II was withdrawn by Respondent, the undersigned will not address these sections of the District's policy.

rebates went towards personal purchases. [Tr. Vol. III, pp. 670, 694, 706, 748, 772-774]. Petitioner's un rebutted testimony establishes that he initially sent in his personal rebates separately from the District's; however, when Menards combined the rebates into one check, Petitioner started to mail his personal rebates and the District's rebates together. [Tr. Vol. III, p. 670]. While Petitioner indicated that his commingling of the rebates was not a problem because he kept track of what portion belonged to the District, it is clear from the hearing record that Petitioner's record keeping was lacking.

For example, on August 28, 2023, Petitioner purchased a \$189.99 electric fireplace. [Resp. Exh. E, p. 1]. Petitioner acknowledged that the electric fireplace was a personal purchase. [Tr. Vol. III, p. 772]. To pay for a portion of this purchase, Petitioner used the rebate barcode ending in 7247, the total value of which was \$156.16. [Resp. Exh. K, p. 18]. Of the \$156.16, the amount that was issued from the use of the District's Menards credit card amounted to \$27.07. [Resp. Exh. K, p. 18]. Thus, the evidence establishes that a portion of the electric fireplace was paid for using the District's rebate. Since Petitioner acknowledged that the rebates were District funds, the undersigned finds that Petitioner's conduct of commingling his personal rebates with the District's rebates led to a violation of the District's Policy No. 4220, which prohibits the use of District property for personal use without approval. [Tr. Vol. III, pp. 748-749, 760].

It is noted that although Petitioner does not dispute that some of the District's rebates were used on personal purchases, Petitioner asserts that "some of the rebate amounts attributable to the District were incorrect on Ms. Nieuwkoop's spreadsheet." [Pet. Brief, p. 17; Resp. Exh. H]. At the hearing, Ms. Nieuwkoop acknowledged that the spreadsheet contained some errors in how she calculated the total amount of the District's rebates. [Tr. Vol. I, pp. 241-244; Resp. Exh. H]. While these errors are certainly relevant in determining the amount of the District's rebates that were actually used by Petitioner, these errors do not change the fact that some of these rebates went towards Petitioner's personal purchases. Therefore, the undersigned finds Petitioner's argument in this regard to be without merit.

Next, in determining whether Petitioner's actions led to a personal or financial gain as prohibited by the District's Policy No. 4201, Petitioner testified that the other items he purchased using the commingled rebates went towards District purchases. [Tr. Vol. III, pp. 704-705, 707-714, 773; Resp. Exh. E]. Upon review of the totality of the evidence presented, a preponderance of the evidence does not establish that Petitioner's use of the District rebates led to any personal or financial gain. By way of example, for rebate barcode ending in 7737, the total value of the combined rebate was \$97.93, of which the District's rebate amounted to \$24.19 and the Petitioner's personal rebate amounted to \$73.74. [Resp. Exh. K, p. 18]. On that particular rebate, Petitioner credibly testified that he made purchases for the District that included building materials, paint, and tools. [Tr. Vol. III, pp. 708-714; Resp. Exh. E, pp. 23-24]. The total amount of the purchases

for building materials, paint, and tools exceeded the amount of the rebate that belonged to the District, supporting Petitioner's contention that he spent some of his own rebate money on District-related purchases. [See Resp. Exh. E, pp. 23-25; Resp. Exh. K].

Similarly, for rebate barcode ending in 0150, the total value of the combined rebate was \$467.95, of which the District's rebate amounted to \$440.16, and Petitioner's personal rebate amounted to \$27.79. [Resp. Exh. K, p. 18]. On that rebate, Petitioner again made purchases that included building materials and tools. [Resp. Exh. K, p. 18]. The total amount of these types of purchases that were paid for using this rebate exceeded the amount of the District's rebate value. Again, these types of purchases support Petitioner's contention that he would spend at least a portion of his own rebate money on school purchases. [See Tr. Vol. III, p. 672; Resp. Exh. K, p. 18].

Respondent did not dispute that these purchases could have been District purchases but instead argued that these purchases could have been for "activities he ran from his home workshop." [Resp. Brief, pp. 7-8]. In support of this assertion, Superintendent Tuller testified regarding her review of photographs taken from Petitioner's social media account showing his home workshop. [Tr. Vol. I, pp. 63-64; Resp. Exh. W]. Superintendent Tuller testified that she had concerns about the items seen in the photographs being purchased with District rebates. [Tr. Vol. I, pp. 63-64; Resp. Exh. W]. However, Petitioner disputed that any of the items seen in these photographs were purchased with District funds. [Tr. Vol. III, pp. 725-727, 738-739; Resp. Exh. W]. On cross-examination, Superintendent Tuller acknowledged she had no evidence that any of the items in Petitioner's home workshop were purchased with District rebates. [Tr. Vol. I, p. 167]. Therefore, the undersigned finds this argument to be unpersuasive.

In addition to establishing that he used his personal rebates on District purchases, Petitioner offered evidence of purchases he made at Menards with his personal credit card to support his assertion that he also made purchases for the District with personal funds for which he did not seek reimbursement. [Tr. Vol. III, p. 672; Resp. Exh. J]. For instance, Petitioner's Menards receipts indicate that he purchased items such as construction framing, semi-gloss lacquer, lag screws, drive bits, and spray paint on his personal credit card. [Resp. Exh. J, pp. 1, 3, 17, 32, 35]. These same types of purchases were also made for the CTE classroom using the District credit card. [Resp. Exh. A, pp. 20, 38, 46, 49-50; Resp. Exh. C, p. 4; Resp. Exh. E, p. 4]. Similarly, both the District's credit card receipts and Petitioner's personal receipts reflect purchases of mouse traps, which Petitioner credibly testified was a problem he had to address at the District. [Tr. Vol. III, p. 704; Resp. Exh. A, pp. 10, 47; Resp. Exh. J, p. 17].

Petitioner also reported to Superintendent Tuller during the investigation that it was sometimes easier to swipe his credit card for classroom related purchases rather than go through the process of using the District's credit card. [Tr. Vol. I, pp. 34-35; Tr. Vol.

III, pp. 671, 740-741; Resp. Exh. I]. This statement lends credibility to Petitioner's argument that he would use his own card for District purchases. Petitioner's statement is further substantiated by an email he sent to Ms. Darr in March 2023, where he asked for his own District card because he was going to Menards "a lot and in off hours/weekends and have forgot to get the card . . . several times." [Resp. Exh. N, p. 2].

Respondent pointed out that some of the purchases shown on Petitioner's personal receipts from Menards "'predated" his District employment and others were for purchases made over holiday breaks. [Tr. Vol. III, pp. 751-756; Resp. Exh. J, pp. 1-2, 12-14, 18, 27, 29; Resp. Brief, pp. 6-7]. The one receipt that "predated" Petitioner's employment was dated June 21, 2022; however, the parties agreed that Petitioner was hired in June 2022, pending Board approval. [Resp. Exh. J, p. 1; Tr. Vol. III, pp. 752, 820]. Petitioner credibly explained that he received keys to the building in June and spent the summer getting the shop ready for the upcoming school year. [Tr. Vol. III, p. 752]. As to the other receipts, Petitioner indicated that he continued to work on things at the school during breaks. [Tr. Vol. III, p. 753]. The fact that so many of these personal credit card purchases were made during breaks also seems plausible since Petitioner likely would not have had access to the District credit cards during breaks. [See Tr. Vol. III, p. 788]. Of further note, even if these purchases did take place outside of Petitioner's contract year and therefore could not be considered District purchases, there was no evidence that Petitioner attempted to fraudulently seek reimbursement for these purchases. Upon review of the evidence presented, a preponderance of the evidence establishes that Petitioner did spend some of his personal funds on District purchases.

A point of contention between the parties was a generator that Petitioner purchased in part using a District rebate. At the hearing, Petitioner testified that he bought the generator for the CTE program to use for community outreach projects and campus projects. [Tr. Vol. III, pp. 643-644, 694-696]. Petitioner testified that he kept the generator in a box at his house until one day when he brought the generator to the District for a teacher to use while cleaning out the football sheds. [Tr. Vol. III, pp. 696-697]. Petitioner further testified that he brought the generator back to his house to drain out the gas but indicated that he never used the generator for anything outside of that one day at the District. [Tr. Vol. III, p. 697]. Respondent offered no evidence to contradict Petitioner's testimony.

At the hearing, Petitioner acknowledged that after this single use, the generator remained at his house. [Tr. Vol. III, p. 699]. The parties agreed that the generator was returned to the District after the tenure hearing had concluded. [Pet. Brief, p. 30; Resp. Brief, p. 15]. Since the evidence establishes that the generator was actually the property of the District's, this further invalidates the charge that Petitioner spent \$892.36 on non-school purchases. [See Tenure Charge I, ¶ 8, p. 2].

Respondent maintains that Petitioner's admission that the generator stayed at his home until the hearing constituted larceny by conversion. [Resp. Brief, pp. 15-16]. Petitioner contests this allegation stating that the tenure charges do not allege that Petitioner engaged in larceny by conversion. Upon review of the charges, the undersigned agrees. As noted by Petitioner, new charges cannot be introduced during or after a tenure hearing pursuant to MCL 38.102, which states that "[a]ll charges against a teacher shall be made in writing, signed by the person making the charges, and filed with the secretary, clerk, or other designated officer of the controlling board, and a copy of the charges shall be provided to the teacher." [Pet. Reply Brief, p. 18; See also *Abrahams v Ann Arbor* (81-3)]. Therefore, the undersigned must conclude that these alleged charges were not filed in accordance with MCL 38.102.

Charge I goes on to state that "despite repeated requests, [Petitioner] was unable or unwilling to provide school or law enforcement personnel with records of the \$892.36 in purchases from the rebates school funds, or evidence that those purchases were used for school purposes." [Tenure Charge I, ¶ 7, p. 2].

As stated above, Petitioner acknowledged that he did not retain the records he kept showing how he was spending the District's rebate funds, which is why he was unable to provide the District with records when they were requested. [Tr. Vol. III, p. 731]. However, Respondent's allegation that he was unwilling to provide records or was uncooperative during the investigation was unsubstantiated. [See Tenure Charges ¶ 7, p. 2; Resp. Reply Brief, p. 4]. It was undisputed that Petitioner disclosed his lack of records from the beginning of the investigation. The parties further agreed that Petitioner did provide a one-page document where he listed items that he believed he had purchased with the rebates as well as the approximate months and years that he purchased these items based on his knowledge of what projects were being completed in the program at those times. [Tr. Vol. I, pp. 33-35, 140; Tr. Vol. III, pp. 675-676, 678, 812; Resp. Exh. I]. Petitioner also testified that he did attempt to get his receipts from the kiosk as requested by Superintendent Tuller; however, due to the volume of purchases he had over the last couple of years, he was unable to obtain any receipts at that time. [Tr. Vol. III, p. 681]. Again, Petitioner communicated his inability to obtain receipts to the District through his union representative. [Tr. Vol. III, p. 681; Resp. Exh. T].

Respondent alleges that Petitioner's actions were "premeditated acts of embezzlement and misappropriation of District money and property". [Resp. Brief, p. 9]. In support, Respondent cites to several prior decisions issued by the Commission and maintains that the "common thread underlying those decisions, as well as others involving dishonesty, is the breach of the requirements of moral behavior necessary for teachers to be appropriate role models for students." [Resp. Brief, pp. 9-10]. Respondent cites to *Lampley v Board of Educ of the Sch Dist of the City of Flint* (02-34), where the

Commission upheld the discharge of a teacher who pled guilty to a felony involving the preparation of false tax returns. [Resp. Brief, p. 10]. Respondent also cites to *Green v Detroit Pub Schs* (03-39), where the Commission upheld the discharge of a teacher who blatantly lied on her employment application in order to gain re-employment with the district. [*Id.*]. Finally, Respondent cited to *Korda v Board of Educ of the Birmingham Pub Schs* (93-4), where the Commission upheld the discharge of a teacher who was found guilty by a jury for obtaining money by false pretenses, with her conviction being affirmed on appeal. [*Id.*].

The cases cited by Respondent are distinguishable from the facts in the instant matter. Unlike *Lampley, supra*, Petitioner did not plead guilty to a crime of dishonesty, although he did enter a nolo contendere plea, which will be addressed in further detail below. Additionally, Petitioner was not found guilty by a judge or a jury as was the case in *Korda, supra*. In contrast to *Green, supra*, Respondent failed to establish that Petitioner blatantly lied or was dishonest during the investigation about his use of the District's rebates. Rather, at the District's first investigatory meeting in December 2024, Petitioner was forthcoming by admitting to commingling his rebates with the District's rebates and that he was unable to locate any documentation or records as to what he purchased with those combined rebates. [See Resp. Exh. R, pp. 1-2]. It is further observed that Petitioner acknowledged having the rebate checks sent to his home, an action he reasonably believed he had permission to take.

Respondent also cites to *Kelso v Southfield Pub Schs* (02-33-2-R), stating that the Commission "determined that "[m]isappropriation of district funds, even if only one offense, warrants discharge." [Resp. Brief, p. 11]. *Kelso* is also distinct from the facts at issue in this matter. In *Kelso*, the evidence established that the employee schemed to resell tickets and kept the money from the resold tickets without turning in the funds to the district. Unlike Petitioner, the employee in *Kelso* chose not to testify and the allegations in *Kelso* were corroborated by video evidence introduced at the hearing.

Next, Respondent cites to *Sullivan v Wayne-Westland Community Schools* (93-53) and *Forbes v Swartz Creek Comm Schs* (24-2), cases which involved employees who knowingly claimed pay they were not entitled to receive. These cases are also distinguishable given that Respondent failed to establish that Petitioner knowingly spent District rebate funds on personal purchases. Instead, the evidence establishes that Petitioner was negligent in his accounting of the division of his personal rebates versus the District rebates, which led to him using some of the District's rebates on personal purchases. The evidence does not establish, however, that Petitioner was commingling the rebates with the intent to misappropriate or embezzle the District's funds for his own personal purchases.

Respondent also cited to *Creelman v Grosse Pointe Public Schools* (81-15), which involved an employee who admitted to removing school property and subsequently failed to return the property after being directed to do so. *Creelman* is also distinct from the facts in this case as the evidence establishes that Petitioner's mailing of the rebates was with permission. Additionally, the evidence establishes that Petitioner subsequently complied with the directive to stop mailing the rebates himself.

Respondent further cites to *Beyer v Bangor Public Schools* (76-34), where an employee knowingly purchased items using District funds and converted them to personal use for items such as a food freezer. The employee's use of district funds in *Beyer* allowed him to obtain a district discount and evade payment of state sales tax. Here, there was no evidence of such a benefit to Petitioner and again the evidence fails to establish that he knowingly spent District rebates on personal purchases.

In summary, the evidence establishes that Petitioner sent in his personal rebates with the District's rebates, knowing that the rebates would be commingled into one rebate check. Although there was no specific District policy related to documenting the spending of District rebates, Petitioner did acknowledge that he was aware that the District's rebates were District funds. Thus, when Petitioner chose to send in his personal rebates with the District's rebates, it was incumbent upon him to ascertain which portion of the rebate check was his own personal rebate versus the District's. Petitioner's negligence in keeping detailed records in this regard led to his failure to ensure that he was appropriately spending the District's rebates *solely* on District purchases. Based on these actions, the undersigned ALJ finds that Respondent has established that Petitioner violated District Policy No. 4220 "Use or Disposal of District Property" and District Policy No. 4201(A)(9) related to "Employee Ethical Conduct". [See Resp. Exh. Y, pp. 3, 10].

While Petitioner did intentionally commingle his personal rebates with the District's, a preponderance of the evidence does not establish that Petitioner's spending of the District's rebates on personal items was intentional or that it led to him gaining some personal or financial benefit. In fact, the evidence establishes that Petitioner's lack of documentation led to him spending several of his own rebates on District purchases. [See Resp. Exh. E; Resp. Exh. K, p. 18]. Furthermore, the evidence establishes that Petitioner purchased District-related items on his own personal credit card rather than taking the additional time to go through the process of obtaining the District's credit card from the District's Business Office. [Resp. Exh. I; Resp. Exh. J]. Therefore, the undersigned does not find that Petitioner's actions were in violation of District Policy No. 4201(B) "Conflict of Interest". [Resp. Exh. Y, p. 4].

In *Giffels v Millington Comm Schs* (07-30), a teacher was found to have knowingly falsified receipts for reimbursement; however, the Commission found the teacher's

discharge to be excessive considering her long-standing, successful career where there was an absence of evidence of any prior misconduct or discipline.

Like the teacher in *Giffels*, although Petitioner's conduct may warrant discipline, the undersigned finds Petitioner's conduct in this regard does not rise to the level of a terminable offense. This finding will be addressed in further detail below.

Charge I, Paragraphs 9(A) through 9(E): Alleged Violations of Criminal Statutes

Under Charge I, Paragraphs 9(A) through (E) of Respondent's tenure charge, Respondent alleges that Petitioner's conduct, as discussed above, violated the following criminal statutes:

- A. MCL 750.157u: Causing device holder to be charged or overcharged (felony).
- B. MCL 750.175: Embezzlement by a public officer, agent, or servant (felony).
- C. MCL 750.174: Embezzlement by agent, servant, or employee (misdemeanor or felony).
- D. MCL 750.218: False pretenses with intent to defraud (misdemeanor or felony).
- E. MCL 750.248: Making, altering, forging or counterfeiting public record (felony).

It is first noted that Respondent offered no specific evidence as to how Petitioner's conduct constituted violations as alleged under Charge I, Paragraphs 9(A), 9(B), 9(D), or 9(E). Furthermore, while there was a criminal investigation involving Petitioner's conduct, Respondent introduced no evidence to establish that Petitioner was ever charged with the crimes listed in Paragraphs 9(A), 9(B), 9(D), or 9(E). Respondent also failed to address these specific charges in its post-hearing brief. As such, Respondent has not met its burden of establishing that Petitioner's conduct violated MCL 750.157u, MCL 750.175, MCL 750.218, or MCL 750.248.

Regarding Charge I, Paragraph 9(C), MCL 750.174 states, in pertinent part, as follows:

- (1) A person who as the agent, servant, or employee of another person, governmental entity within this state, or other legal entity or who as the trustee, bailee, or custodian of the property of another person, governmental entity within this state, or other legal entity fraudulently disposes of or converts to his or her own use, or takes or secretes with the intent to convert to his or her own use without the consent of his or her principal, any money or other personal property of his or her principal that

has come to that person's possession or that is under his or her charge or control by virtue of his or her being an agent, servant, employee, trustee, bailee, or custodian, is guilty of embezzlement.

- (2) If the money or other personal property embezzled has a value of less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value of the money or property embezzled, whichever is greater, or both imprisonment and a fine.

Respondent first argues that “Petitioner’s choice to remain silent when being investigated for, and after being charged with, embezzlement is evidence of his responsibility for those crimes against the District.” [Resp. Brief, p. 13]. Respondent further maintains that the “invocation of the Fifth Amendment privilege against compulsory self-incrimination therefore gives rise to a legitimate inference” of criminal activity in a civil proceeding. *Bank of America, NA v Fidelity Nat’l Title Ins Co*, 316 Mich App 480, 511 (2016). That reasoning should extend to adversarial administrative matters.” [Resp. Brief, pp. 13-14].

In support, Respondent maintains that “Petitioner twice turned down the opportunity to tell law enforcement officials of his purported innocence.” [Resp. Brief, p. 14]. The two opportunities referenced by Respondent occurred when Petitioner declined to speak with an officer at his home before speaking to an attorney and Petitioner’s decision not to speak to Detective Riffle over the phone. [Resp. Exh. K, p. 9; Tr. Vol. III, p. 765].

In contrast, Petitioner argues that the cases cited by Respondent in support of their argument were not applicable as they involved cases where criminal charges were not pending or were no longer pending, unlike in Petitioner’s situation. [Pet. Reply Brief, p. 14]. Petitioner goes on to note that he did not invoke the Fifth Amendment at the tenure hearing and that Petitioner’s “Fifth Amendment right against self-incrimination was not applicable with regard to his criminal charges.” [Pet. Reply Brief, pp. 14-15]. The undersigned agrees.

In *Bank of America, supra*, the Court of Appeals inferred that an individual engaged in criminal activity when that individual invoked the Fifth Amendment during a civil proceeding. Similarly, in *Phillips v Deihm*, 213 Mich. App. 389, 400 (1995), the Court of Appeals noted that the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them: the amendment does not preclude the inference *where the privilege is claimed by a party to a civil cause*. (citing *Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S.Ct. 1551, 1557, 47 L.Ed.2d 810 (1976)). (Emphasis supplied). These cases are distinguishable from the instant matter in which Petitioner had chosen not to

make a statement to officers while criminal charges were pending. As noted above, Petitioner did not invoke the Fifth Amendment in a civil proceeding or at the tenure hearing but rather testified and subjected himself to cross-examination in this matter. Therefore, the undersigned declines to take a negative inference from Petitioner asserting any Fifth Amendment rights in the criminal proceeding.

Second, Respondent asserts that Petitioner's guilt is evidenced by having "withheld thirty-nine pages of receipts from school officials during the investigation of the tenure charges upon the advice of his criminal attorney." [Resp. Brief, p. 14]. Petitioner's un rebutted testimony is that he obtained the receipts in question around mid-February 2025. [Tr. Vol. III, p. 688]. According to Superintendent Tuller, she completed the investigation related to the tenure charges on January 13, 2025. [Tr. Vol. I, pp. 60-61]. Thus, the allegation that Petitioner withheld these receipts during the investigation process is inaccurate. As to Petitioner's failure to provide the receipts in mid-February 2025, the undersigned finds that Petitioner was acting upon the reasonable advice of his criminal attorney, rather than, as Respondent suggests, withholding the documents because he was conscious of guilt. [See Resp. Brief, p. 14]. Furthermore, even when Petitioner attempted to provide said receipts prior to the June 2025 Board meeting as well as at the June 11, 2025 Board meeting, the receipts were refused. [Tr. Vol. I, pp. 144-145].

Next, Respondent notes that Petitioner was "charged with embezzlement by an agent or trustee less than \$200 for his mishandling of District funds." [Resp. Brief, p. 7]. On July 18, 2025, Petitioner pled "no contest" or *nolo contendere* to these charges. It is observed that this plea was entered after the Board had already voted to proceed on the charges in this matter. Respondent asserts that Petitioner's no contest plea "is the functional equivalent of a guilty plea". [Resp. Brief, p. 14]. For the reasons stated below, the undersigned does not find this argument compelling.

"A nolo contendere plea does not admit guilt, it merely communicates to the court that the criminal defendant does not wish to contest the state's accusations and will acquiesce in the imposition of punishment." *Lichon v American Universal Ins Co*, 435 Mich 408, 417 (1990). Pursuant to MCL 767.37, "[a]t the arraignment of any person upon an indictment or upon the charge in a warrant, complaint or information the court may accept a plea of nolo contendere and if such a plea is accepted, the court shall proceed as if he had pleaded guilty." However, the court may also choose to take a nolo contendere plea under advisement. See MCR 6.302(F). Here, the evidence establishes that the court withheld acceptance of the plea pending the completion of the "diversion as described in the plea agreement." [Resp. Exh. Z, p. 8]. The court advised Petitioner that if he completes the class, pays the costs and any restitution if ordered, he would "see a dismissal". [Resp. Exh. Z, p. 10].

Respondent further argues that “[a]lthough falling short of a judicial admission, in this context Petitioner’s no contest plea may also be taken both as revealing consciousness of guilt, and of knowingly waiving his right to contest the State’s evidence that at least some of his charged misconduct was criminal in nature and could be proven beyond a reasonable doubt.” [Resp. Brief, p. 15]. The undersigned does not find this argument to be persuasive. The undersigned finds that Petitioner’s nolo contendere plea, standing alone, is not sufficient to establish the required element of intent for the crime of embezzlement, especially in light of the fact that there has been no conviction of this charge as of the date of the tenure hearing. Rather, the undersigned finds that the Petitioner’s conduct was the result of his negligent accounting methods used for tracking the use of the District’s rebates. Therefore, the undersigned concludes that Respondent did not meet its burden of establishing the violations as set forth in Charge I, Paragraph 9(C).

Charge I, Paragraph 9(I): Violation of Michigan NEA and Model Codes of Educational Ethics

The tenure charges allege that Respondent’s conduct set forth under Charge I was in violation of “The Michigan, NEA and Model Codes of Educational Ethics.” Respondent produced no evidence at the hearing as to what specific provisions of the ethics codes Petitioner was alleged to have violated. Without further evidence, the undersigned finds Respondent has failed to establish that Petitioner violated “The Michigan, NEA and Model Codes of Educational Ethics”, as alleged under Charge I, Paragraph 9(I).

Arbitrary or Capricious Finding

In *Bethke v Godwin Heights Pub Schs and Bd of Ed*, (15-29), the Commission found it is the District’s “responsibility to conduct a thorough investigation . . . See *Sepanski v Detroit Public Schools* (12-4), aff’d unpublished opinion of the Court of Appeals issued August 21, 2014 (Docket No. 314096).” The Commission went on to state that “a discharge decision that is based on a less than thorough investigation can, in appropriate circumstances, be considered as lacking in consideration of relevant “principles, circumstances, or significance.”” *Cona, supra* at 143.

During the District’s investigation, the parties agree that Petitioner informed Superintendent Tuller that he was following the same procedures used by Mr. Lawn when handling the Menards rebates. In support, Petitioner also provided a letter to the District from Mr. Lawn stating that he had permission to handle the Menards rebates as long as he used the rebates on the CTE program. [Resp. Exh. S, p. 1]. Before the District’s investigation concluded, Mr. Lawn again wrote a letter to Superintendent Tuller regarding his handling of District rebates. [Pet. Exh. 36]. On a third occasion, Mr. Lawn sent a similar letter to the Board before the May 27, 2025 Board meeting, again

explaining that he would personally send in the rebate and subsequently spend the value of the rebate on District purchases. [Pet. Exh. 35].

Although the testimony was contradictory as to whether Respondent was still seeking to terminate Petitioner for cutting off the rebates and having the funds sent directly to him, the undersigned must conclude that it was still one of the reasons for Petitioner's termination as these factual allegations set forth in Charge I were not withdrawn by Respondent. As such, the undersigned must determine whether the Superintendent or the Board arbitrarily or capriciously failed to consider the evidence offered by Mr. Lawn.

As stated above, Superintendent Tuller testified she did not contact Mr. Lawn regarding his explanation of his past practice with the rebates because she did not think it was relevant. [Tr. Vol. I, pp. 84-85, 114, 116]. Although Superintendent Tuller claimed that Mr. Lawn's past practice was irrelevant, she testified that when Petitioner told her he had asked Ms. Darr if he could send the rebates to his home, she decided to speak with Ms. Darr for confirmation. [Tr. Vol. I, p. 116]. Superintendent Tuller acknowledged that Ms. Darr had told Petitioner to "do what Keith does"; however, this statement still did not prompt Superintendent Tuller to speak with Mr. Lawn during her investigation. [*Id.*]. These actions call into question the thoroughness of the District's investigation into Petitioner's conduct with respect to mailing in the rebate receipts and receiving the rebate checks.

The Commission has recognized that a teacher may present defenses such as retaliation, harassment, disparate treatment, or discrimination "in mitigation of the alleged wrongdoing in an attempt to gain a reduction in the penalty." *Suhuba-Baruti v Baldwin Community Schools* (90-7). The Commission has ruled that disparate penalties may not be imposed by the same school district for the same or similar misconduct. *VanVliet v Lakeview Community Schools* (76-36) (See also, *Harding v Bedford Public Schools* (82-74); *Willis v Grand Rapids Public Schools* (79-51-R)). A teacher who asserts a claim of disparate treatment bears the burden of proving that another teacher's conduct was similar to his or hers. The teacher must also prove that there was no reasonable basis for the district to treat the other teacher differently. See *Rogner v Bay-Arenac Intermediate School District* (06-47).

Respondent's assertion that Mr. Lawn's past practice was irrelevant is without merit. The tenure charges clearly establish the relevance of such information. [See Charge I, ¶¶ 3-4]. As such, Mr. Lawn's indication that he followed the same procedures of handling the rebates as Petitioner, without receiving any discipline, is relevant in considering whether Petitioner is being penalized for the same or similar conduct. The undersigned finds that Superintendent Tuller's and the Board's failure to consider this information from Mr. Lawn is evidence that Respondent failed to conduct a thorough investigation before proceeding on these charges.

Next, the tenure charges assert that Petitioner “admittedly spent” the amount of \$892.36 “during personal trips to the store” and “on non-school purchases.” [Tenure Charge I, ¶¶ 6, 8]. However, this characterization is misleading and inaccurate. First, there was no evidence presented to establish that Petitioner had ever admitted to the allegation that he spent the amount of \$892.36 on non-school purchases. In fact, Superintendent Tuller acknowledged that she did not show the itemized list of purchases she received from Detective Riffle to Petitioner to have him identify which items were personal purchases and which items were District purchases. [Tr. Vol. I, p. 125; Tr. Vol. III, p. 693; Resp. Exh. K, p. 18]. Again, this indicates that a thorough investigation was not completed prior to the decision to proceed upon the tenure charges.

The tenure charges also fail to indicate that Detective Riffle had determined that rebate bar code ending in 0150 “consisted of various building materials, tools, and other items that are potentially consistent with CTE program needs.” [Resp. Exh. K, p. 18]. At the hearing, Respondent did not dispute that the items purchased were “consistent with CTE program needs” but instead asserted that Petitioner may have purchased those items for his personal workshop. [See Resp. Exh. W]. However, this information was not included in the tenure charges and Superintendent Tuller acknowledged she had no proof that any of the items in Petitioner’s personal workshop were purchased with District funds. The finding by Detective Riffle that some of the items purchased with the District’s rebates were consistent with CTE purchases was important information that should have been conveyed to the Board for consideration.

With respect to Petitioner’s contention that the District’s calculation of the total rebates used by Petitioner was inaccurate, the undersigned agrees with Respondent that the exact amount is not particularly relevant to the charges of whether Petitioner embezzled or misappropriated District funds. However, it is worth noting that Ms. Nieuwkoop acknowledged there were discrepancies in her calculation of the rebates used, which she determined to be \$892.36. [See Resp. Exh. B, G and H; Tr. Vol. I, pp. 241-243]. These discrepancies were further highlighted by Detective Riffle’s calculation that the District’s rebates actually amounted to \$797.28. [Resp. Exh. K, p. 18; Tr. Vol. II, p. 324]. It is noted that Respondent did not contest Detective Riffle’s calculations of the amount of the District’s rebates. While it is understandable that the District relied upon Ms. Nieuwkoop’s initial calculations, once conflicting information was received from the police investigation, the undersigned finds that the District should have done further investigation to determine the actual amount of the District’s rebates that were used. It is apparent from the record that no further investigation in this manner was conducted and there was no credible explanation as to why this did not occur.

It was undisputed by the parties that Petitioner, by and through counsel, did attempt to provide Superintendent Tuller and the Board with copies of his personal receipts prior to

the June 11, 2025 Board meeting; however, the receipts were refused. [Pet. Exh. 37, 1:50:00 to 1:50:43; Resp. Exh. J]. While it is unlikely that Petitioner's personal credit card receipts would have shown what he purchased using the rebate checks, the undersigned observes that these were the receipts that Superintendent Tuller had explicitly requested that Petitioner provide during the investigation. [See Tr. Vol. I, pp. 59-60, 141; Resp. Exh. T]. Indeed, Superintendent Tuller acknowledged that she would have wanted to see those receipts. [Tr. Vol. I, p. 147]. Thus, the receipts apparently had some relevance to Respondent's investigation.

Petitioner argues that Superintendent Tuller "had an obligation to continue her investigation and review the newly obtained relevant information. Her obligation to provide [Petitioner] with due process did not end simply because she had already made up her mind." [Pet. Reply, p. 23]. The undersigned agrees that the District has a continuing obligation to conduct a thorough investigation leading up to the Board's voting on the charges and thus the receipts should have been reviewed to determine if they had any relevance to the tenure charges.

Not only were the receipts not reviewed by Superintendent Tuller, when Petitioner's attorney attempted to provide copies of the receipts to the Board members, the Board members were instructed by counsel that the Tenure Act "forbids" them from "weighing the facts or looking at the evidence" and that the Tenure Act requires them to assume the facts are true. [Pet. Exh. 37, 1:24:40 to 1:27:38]. This instruction led to the Board members not only failing to consider the receipts presented by Petitioner at the meeting but also led to the Board members not reviewing any evidence at all prior to voting on the charges. [Tr. Vol. I, p. 164; Tr. Vol. III, pp. 590-591, 594, 627]. The instruction to not review the evidence was also in direct contradiction to the June 2, 2025 letter sent to Petitioner regarding the tenure charges, which stated, in part, "upon your request, the charges and *any responsive material or information submitted by you will be considered by the Board of Education* in a closed session before deciding whether to proceed upon or modify the enclosed tenure charges." (Emphasis supplied). [Pet. Exh. 42, pp. 3-4].

Even when the District's counsel stated that Petitioner's counsel could place the documents in front of the Board members, counsel continued to instruct the Board members that they were not to be "weighing the evidence this evening." [Pet. Exh. 37, 1:50:43 to 1:51:37].

The parties were in dispute as to the Board's obligations when considering tenure charges. Respondent argued that the Act "does not mandate or suggest that a school district's controlling board, investigate, or hear and evaluate evidence, underlying proposed tenure charges." [Resp. Brief, p. 17]. Though it may be that the Act does not instruct on the Board's duties beyond what is specified in MCL 38.102, it also does not *forbid* the Board from reviewing the evidence against the tenured teacher. Indeed, MCL

38.102 allows the Board to modify the charges and thus suggests that the Board should be doing more than merely assuming the facts are true, as they were instructed to do in this matter.

In support of its argument that the Board did not commit a procedural error, Respondent cited to cases where the Commission held that teachers are not entitled to a “warm-up evidentiary hearing” by the Board. *Falzetti v Plymouth Canton Schools* (96-10). [Resp. Brief, pp. 18-20]. In *Falzetti*, the Commission determined that the District’s failure to provide a copy of the tenure charges to the teacher before the Board voted on the charges was a violation of the Act. The Commission reasoned as follows, in pertinent part:

When a post-“termination” hearing is available, as in the case here, the pre-“termination” opportunity to respond need only be extensive enough to guard against mistaken decisions. A full evidentiary hearing is not required. The teacher’s response may be either in person or in writing. *Tomiak, supra* at 701-704. The controlling board is required only to provide the teacher with notice and an opportunity to respond to the charges, and no more than that. The State Tenure Commission provides the only evidentiary hearing. This procedure is the same as that provided in abandonment cases. See, e.g., *Kilyanek v Ecorse Board of Education* (89-8). . . .

* * *

Having found that appellee violated Article IV, § 2, we must determine the appropriate remedy. In *Ferrario v Escanaba Board of Education*, 426 Mich 353; 395 NW2d 195 (1986), the Michigan Supreme Court recognized that the State Tenure Commission may reverse a board decision on the basis of procedural error alone. It held, however, that the Commission shall not order reinstatement of a teacher where there has been no hearing and decision on the merits. *Ferrario, supra* at pp 383, 388. Where a procedural or due process error cannot be corrected on remand, the State Tenure Commission must hold a hearing prior to ordering reinstatement. *Ferrario, supra* at pp 383, 388. See, also *Wilson v Flint Board of Education*, 361 Mich 691, 697; 106 NW2d 136 (1960).

* * *

Respondent asserts that Petitioner had an opportunity to address the Board on two occasions prior to the Board voting to proceed on the charges. [Resp. Brief, p. 19]. While it may be that Petitioner had an opportunity to address the Board, as noted

above, he was not given the opportunity to present any responsive materials or documentation. Although Respondent maintains that the receipts provided were “dumped on [the Board] without advance notice”, the evidence does not support this assertion. [See Resp. Brief, p. 19]. Rather, the unrebutted evidence establishes that there was an attempt to provide these receipts prior to the Board meeting, but that the attempt was declined by Respondent’s counsel. Additionally, the statement that the “Board acted well within its discretion” to decline the documents is without merit. Based on a review of the instructions the Board received, it is evident that the Board understood they were forbidden from reviewing any evidence and that they must instead assume the facts are true and, if true, determine whether the charges should proceed to a hearing. [Pet. Exh. 37, 1:24:40 to 1:27:38; Tr. Vol. I, p. 164; Tr. Vol. III, pp. 590-591, 594, 627]. Since the Board members did not review any evidence, the undersigned cannot conclude that Petitioner was given a reasonable opportunity to respond to the charges before the Board voted.

In further support that the Board members did not have a clear understanding of their role in the tenure process, there was evidence presented that established that Superintendent Tuller subsequently apologized to the Board members for feeling “blindsided” based on their lack of understanding of the tenure process. [Pet. Exh. 38; Tr. Vol. I, p. 171-172]. Petitioner also notes that Angela Gerber, who testified at the hearing, stated that during a private conversation she had with Board President Otting, Ms. Otting made reference to not understanding the process and referred to Petitioner as a “sacrificial lamb”. [Pet. Brief, p. 35; Tr. Vol. II, pp. 469-472]. Although Ms. Gerber’s testimony regarding Ms. Otting’s statement was hearsay, Respondent indicated that it intended to call Ms. Otting as a rebuttal witness but ultimately did not call Ms. Otting to testify on rebuttal. [See Tr. Vol. II, p. 498]. Ms. Otting’s statements to Ms. Gerber regarding a lack of understanding of the tenure process, however, was corroborated by the evidence presented on the record.

As stated in *Falzetti, supra*, the Board “may reverse a board decision on the basis of procedural error alone.” As stated in *Cona, supra*, “[o]ur responsibility in this case is to review the quality and quantity of the evidence and to determine if the decision to discharge appellant is the result of a deliberate, principled reasoning process supported by evidence.” Since the Board admittedly did not review any evidence, it cannot be said that the Board’s decision to discharge Petitioner was the result of a “deliberate, principled reasoning process supported by evidence.” Not only did the Board overlook important evidence, the Board admittedly did not look at any evidence whatsoever.

Given the deficiencies outlined above, the undersigned ALJ finds that the decision of the controlling board was not the product of a thoughtful, deliberate, and principled review of all relevant evidence and therefore was arbitrary and capricious.

Appropriate Discipline and the Szopo Factors

Here, Respondent has established only a portion of Charge I against Petitioner, namely the failure to ensure that he was appropriately using the District's rebate funds for District purchases. In determining the appropriate level of discipline when the evidence establishes errors or omissions by a teacher, the Commission has referred to what are known as the *Szopo* factors, which were first enumerated in *Szopo v Richmond Community School* (93-60). The Commission has noted that, in appropriate cases, the *Szopo* factors, "may facilitate the review of a discharge or demotion decision, based on proven charges, for arbitrariness or capriciousness." See, *Green v Reeths-Puffer Public Schools* (16-13) citing *Cona, supra*. In *Szopo*, the Commission opined as follows:

The measure of discipline to be imposed is a more difficult question. This Commission must be sensitive to the needs of the students and school community while not losing sight of the purpose of the Tenure Act to safeguard the rights of competent individuals to teach. This involves a sensitive balancing process requiring the weighing of policy considerations (e.g., the safety of school children) as well as the nature of the individual misconduct and its effect on students, school, and community.

The following is a review of the *Szopo* factors, as applied to this case:

1. *Was the behavior planned or deliberate?*

It was undisputed that Petitioner deliberately commingled his personal rebates and the District's rebates when sending the rebates into Menards for processing. Petitioner knew that when he sent these rebates together, they would be combined to form one single rebate check. Although there was no written policy regarding record keeping for the use of the District's rebates, Petitioner's acknowledgment that these rebates were District funds suggests that Petitioner should have been keeping a detailed record of which rebates were his and which were the District's. However, the evidence presented did not establish that Petitioner intentionally and knowingly used the District's rebates on personal purchases. Rather, the evidence establishes that Petitioner's negligent accounting of the rebates led to the District's rebates being mistakenly spent on non-District related items.

Respondent argues that Petitioner's nolo contendere plea should be used to show deliberate intent. [Resp. Reply, p. 7]. As detailed above, the undersigned finds that the entry of a nolo contendere plea, standing alone, is not sufficient to establish the element of intent to commit embezzlement.

In summary, this factor weighs in favor of discipline for Petitioner but does not rise to the level of discipline that warrants Petitioner's termination.

2. Did the behavior constitute a crime?

Although Petitioner's behavior did lead to Petitioner being charged with a crime, the evidence establishes that Petitioner was not convicted of a crime. Petitioner admittedly entered a nolo contendere plea; however, rather than accepting the plea, the plea was taken under advisement. The evidence establishes that if Petitioner completes the requirements of the plea agreement, the criminal charges will be dismissed. Thus, this factor weighs in favor of the Petitioner.

3. Did the behavior involve fraud, deceit, sexual misconduct, drugs, or a weapon?

Petitioner's behavior does not involve sexual misconduct, drugs or a weapon. Respondent again asserts that Petitioner engaged in fraud and deceit and that his plea supports this assertion. As addressed above, the undersigned finds that the entry of a nolo contendere plea, standing alone, is not sufficient to establish the element of intent to commit embezzlement. The evidence does not establish that Petitioner intentionally engaged in embezzlement but rather engaged in faulty recordkeeping that led to him mistakenly purchasing some personal items with District funds. Thus, this factor weighs in favor of Petitioner.

4. What was the teacher's motive or purpose?

The evidence establishes that Petitioner did not have an improper motive while handling the Menards rebates. The evidence establishes that he followed Mr. Lawn's instructions on mailing in the rebates and having the rebates sent to his home. Petitioner not only received those instructions from Mr. Lawn, but he confirmed with Ms. Darr that this was an acceptable practice. Additionally, when Petitioner was asked to stop sending in the Menards rebates, he complied with the instruction. Furthermore, the evidence establishes that in addition to using some portion of the District's rebates on personal purchases, the evidence also establishes that on several occasions he used his own personal money or rebates to purchase items for the District for which he did not seek reimbursement. These actions do not suggest that Petitioner had a nefarious or improper motive with respect to spending the rebates. This factor favors Petitioner.

5. Did the conduct result in harm to a specific victim, and if so, what is the gravity of the harm?

This factor weighs in favor of Petitioner because there is no harm to a specific victim. There was some harm in that the District's rebates were used at least in part on personal purchases; however, the gravity of that harm is mitigated by the fact that Petitioner used his own rebates and money to purchase District items. This factor is further mitigated by the fact that the District failed to exercise any oversight into the Petitioner's use of the rebate funds.

6. *How much did the teacher's conduct deviate from the norms of appropriate conduct for members of society and teaching professionals?*

Petitioner's failure to keep detailed records of the rebates was inappropriate as it led to his use of the District funds on some personal items. However, the District also failed to change the policies from Mr. Lawn's period of employment and there was insufficient evidence to establish that any change was communicated to Petitioner until November 5, 2024. After he received this communication, it was undisputed that Petitioner complied with the directive. There was also no evidence that the District had any specific policies related to the handling of the rebates that differed from the actions taken by Petitioner.

Regardless, Petitioner admitted that he knew the District's rebates were property of the District and that he was supposed to spend the value of the rebate on the District. Thus, a reasonable person should have known that they needed to keep detailed records to ensure that they were only spending District funds on District items, especially considering Petitioner's decision to commingle the District's rebates with his own. Therefore, Petitioner's conduct deviates from the norms of expected teacher conduct. This factor favors discipline.

7. *Was there any previous disciplinary record, especially for the same type of misconduct?*

It was undisputed that Petitioner has no prior disciplinary record and was previously regarded as an effective or highly effective teacher. This factor weighs in favor of Petitioner.

8. *What effect did any previous punishments or interventions have on the teacher's behavior?*

Since there was no evidence introduced that Petitioner received any previous punishments or interventions, this factor is inapplicable.

9. *What is the teacher's attitude, including whether the teacher accepts responsibility and exhibits a willingness to change?*

It is clear from the record that Petitioner is very passionate about his position as a CTE teacher and that he often agreed to assist with various projects on campus, including the re-building of a ramp needed for a handicapped child in the elementary school. Petitioner also acknowledged that in hindsight he would have "not thrown the receipts away and been more formal in tracking". [Tr. Vol. III, p. 730]. Petitioner rationalized his behavior by saying he lives "like a general contractor" and that he thought commingling his rebates with the District's rebates was not "inappropriate because I was still spending the money on the program." [Tr. Vol. III, p. 748]. When asked if it was fair to

say that it would be difficult to know which funds belonged to him and which funds belonged to the District, he disagreed. Since this is exactly what ended up happening, it is concerning that Petitioner did not accept full responsibility for his failure to keep proper records and accounting. This factor weighs against Petitioner and in favor of discipline.

10. What is the likelihood the behavior will recur?

Although Petitioner failed to accept full responsibility for the things he did wrong, the undersigned does not believe there is any likelihood that this behavior will recur. Petitioner is now well aware that he cannot commingle his personal rebates with District rebates and is further aware of the change in procedures that now requires him to submit the rebates through the District for processing. As noted above, he was already complying with that directive before the investigation that led to the tenure charges. By submitting the rebates through the school, the District will be able to keep track of rebate funds once again. If the District desires to receive itemized receipts for items purchased using rebate checks, the District should update its policy or make it clear in a written directive to its employees that such receipt is required. Petitioner's failure to follow such directives in the future would not preclude Respondent from discharging Petitioner in the event of further misconduct. Thus, this factor weighs in favor of Petitioner.

Recommended Discipline

The level of discipline to be imposed on a tenured teacher is entirely within the discretion of the Commission. Unlike determinations of witness credibility where the Commission must show deference to the ALJ who observed the testimony, the Commission is free to determine the discipline that they feel is appropriate. However, as this Preliminary Decision and Order becomes the Commission's final decision if no exceptions are filed, the undersigned ALJ is suggesting appropriate discipline for the Petitioner.

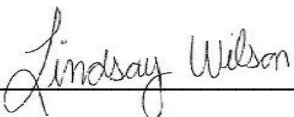
Given the instances of lack of recordkeeping that resulted in some of the District's rebate funds being used on some of Petitioner's personal purchases, discipline in some form is warranted. However, the undersigned does not find that the violation justifies termination. Taken together with the mitigating circumstances, an appropriate discipline would be a 10-day suspension, without pay.

ORDER

NOW THEREFORE, IT IS ORDERED that Respondent's request to discharge Petitioner from his employment was arbitrary and capricious and is therefore **DENIED**.

After completing the 10-day suspension without pay, Petitioner is to be reinstated to his employment on a date to be determined by Respondent District.

IT IS SO ORDERED.



Lindsay Wilson
Administrative Law Judge

Exceptions

A party may file a statement of exceptions to the decision and order or to any part of the record or proceedings including rulings on motions or objections, with the State Tenure Commission. The statement of exceptions must be accompanied by a brief in support of the exceptions and filed in accordance with the rules of the Commission. The brief and statement of exceptions must be served upon each of the parties within the time limit. A party may file a statement of cross-exceptions or a statement in support of the preliminary decision, accompanied by a brief, with the State Tenure Commission, not later than 10 days after being served with the other party's exceptions and brief. MCL 38.71 *et seq.* Arguments in exceptions/cross-exceptions briefs must correspond to the order of exceptions/cross-exceptions. The argument must be prefaced by the exception/cross-exception which it addresses.

The deadline for filing exceptions is 20 days after service of this preliminary decision and order, which falls on Sunday, January 11, 2026. Any exceptions must be **received** by the Commission **on or before 5:00 p.m. on Friday, January 9, 2026**, as this is the last business day before the 20-day deadline. Documents filed with MOAHR after 5:00 p.m. (Eastern Time) are considered filed on the next business day. Mich Admin Code, R 792.10109. Exceptions should be sent to the Office of Administrative Law at MDE-AdminLaw@michigan.gov **and** MOAHR-GA@michigan.gov.

A matter not included in the statement of exceptions or statement of cross-exceptions is considered waived and cannot be heard before the Commission or on appeal to the Court of Appeals. If exceptions are not timely filed, this decision and order becomes the State Tenure Commission's final decision and order.

Notice to Agency to Provide MOAHR with Subsequent Agency or Court Orders

The state agency that is a party to this matter, and/or referred this matter to MOAHR, shall serve MOAHR with any subsequent orders entered as a result of this ALJ's decision or proposed decision, including but not limited to the agency's final order, order to remand the matter to MOAHR for further proceedings, or order on appeal, as soon as practicable following entry of the order to:

Michigan Office of Administrative Hearings and Rules, General Adjudication, by **email (preferred)** to: MOAHR-GA@michigan.gov; **or by regular mail** to: MOAHR-GA, P.O. Box 30695, Lansing, Michigan 48909-8195.

See: Mich Admin Code, R 792.10120(2)(i).